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THE

TWO TRIALS

OF

JOHN FRIES,

on an Indictment for

TREASON;

TOGETHER WITH A BRIEF REPORT OF THE TRIALS OF SEVERAL OTHER PERSONS, FOR

Treason and Insurrection,

In the Counties of Bucks, Northampton and Montgomery,

IN THE *CIRCUIT COURT* OF THE *UNITED STATES*,

Begun at the City of Philadelphia, April 11, 1799; continued at Norristown, October 11, 1799;—and concluded at Philadelphia, April 11, 1800; before the Hon. Judges, IREDELL, PETERS, WASHINGTON and CHASE.

TO WHICH IS ADDED,

A copious Appendix, containing the evidences and arguments of the counsel on both sides, on the motion for a new trial; the arguments on the motion for removing the case to the county where the crime was committed, and the arguments against holding the jurisdiction at Norristown.

TAKEN IN SHORT HAND BY THOMAS CARPENTER.

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PHILADELPHIA:

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1800.

ADVERTISEMENT.

THE following very important *and* intereſting trial, *and the law arguments on the different motions made to the court, has been long kept from the public eye; but no longer than inevitably necessary—It would have been imprudent, (if not unlawful) to have published a first trial, when a second was pending. The reporter has curtailed the second trial as much as possible—not repeating, but referring to the testimony given on the first trial; but he has given at length all* new *evidence that occurred. The testimony is accurately reported—he believes the arguments and opinions to be so, and, to make it so, wherever opportunity offered, he has submitted it to the inspection of the gentlemen themselves: when he could not, he trusts* unimportant inaccuracies, if any, *will be pardoned.*

It is probable, several of the names are wrong spelled, but, without more trouble than necessity demanded, it could not well be otherwise.

ERRATA.

Page 157, *note, dele* "no."

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A CHARGE

Delivered to the GRAND JURY of the UNITED STATES, for the District of Pennsylvania, in the Circuit court of the United States for said district, held in the city of Philadelphia, April 11th, 1799, by JAMES IREDELL, one of the Associate Justices of the Supreme Court of the UNITED STATES.

GENTLEMEN OF THE GRAND JURY,

THE important duties you are now called upon to fulfil, naturally increase with the increasing difficulties of our country. But however great those difficulties may be, I am perſuaded you will meet them with a firm and intrepid ſtep, reſolved, ſo far as you are concerned, that no diſhonour or calamity (if any ſhould await us) ſhall be aſcribable to a weak or impartial adminiſtration of juſtice.

If ever any people had reaſon to be thankful for a long and happy enjoyment of peace, liberty and ſafety, the people of theſe ſtates ſurely have. While every other country almoſt has been convulſed with foreign or domeſtic war, and ſome of the fineſt countries on the globe have been the ſcene of every ſpecies of vice and diſorder, where no life was ſafe, no property was ſecure, no innocence had protection, and nothing but the baſeſt crimes gave any chance for momentary preſervation; no citizen of the United States could truly ſay that in his own country any oppreſſion had been permitted with impunity, or that he had any grievance to complain of, but that he was required to obey thoſe laws which his own repreſentatives had made, and under a government which the people themſelves had choſen. But in the midſt of this envied ſituation, we have heard the government as groſsly abuſed as if it had been guilty of the vileſt tyranny, as if common ſenſe or common virtue had fled from our country, and thoſe pure principles of republicaniſm, which have ſo ſtrongly characterized its councils, could only be found in the happy ſoil of France, where the ſacred fire is preſerved by five Directors on ordinary occaſions, and three on extraordinary ones—who, with the aid of a republican army, ſecure its purity from violation by the Legiſlative repreſentatives of the people.—The external conduct of that government is upon a par with its internal.—Liberty, like the religion of Mahomet, is propagated by the ſword. Nations are not only compelled to be free, but to be free on the French model, and placed under French guardianſhip. French arſenals are the repoſitory of their arms, French treaſuries of their money, the city of Paris of their curioſities; and they are honoured with the conſtant ſupport of French enterprizes in any other part of the world. Such is the progreſs of a power which began by declarations that it abhorred all conqueſts for itſelf, and fought no other felicity but to emancipate the world from tyrants, and leave each nation free to chuſe a gorvernment of its own. Thoſe who take no warning by ſuch an awful example, may have deeply to lament the conſequences of neglecting it.

The ſituation in which we now ſtand with that country is peculiarly critical. Conſcious of giving no real cauſe of offence, but irritated with injuries, and full of reſentment for inſults; deſirous of peace, if it can be preſerved with honour and ſafety, but diſdaining a ſecurity equally fallacious and ignominious at the expence of either; ſtill holding the rejected

Olive Branch in one hand, but a ſword in the other—we now remain in a ſort of middle path between peace and war, where one falſe ſtep may lead to the moſt ruinous conſequences, and nothing can be ſafely relied on but unceaſing vigilance, and perſevering firmneſs in what we think right, leaving the event to Heaven, which ſeldom ſuffers the deſtruction of nations, without ſome capital fault of their own.

Among other meaſures of defence and precaution which the exigency of the criſis, and the magnitude of the danger, ſuggeſted to thoſe to whom the people have entruſted all authority in ſuch caſes, were certain acts of the legiſlature of the United States, not only highly important in themſelves but deſerving of the moſt particular attention, on account of the great diſcontent which has been excited againſt them, and eſpecially as ſome of the ſtate legiſlatures have publicly pronounced them to be in violation of the conſtitution of the United States. I deem it my duty, therefore, on this occaſion to ſtate to you the nature of thoſe laws which have been groſsly miſrepreſented, and to deliver my deliberate opinion as a Judge, in regard to the objections ariſing from the conſtitution.

The acts to which I refer you will readily ſuppoſe to be what are commonly called the Alien and Sedition acts. I ſhall ſpeak of each ſeparately, ſo far as no common circumſtances belonging to them may make a joint diſcuſſion proper.

I. *The Alien Laws*, there being two.

To theſe laws, in particular, it has been objected.

1. That an Alien ought not to be removed on ſuſpicion, but on proof of ſome crime.

2. That an Alien coming into the country, on the faith of an act ſtipulating that in a certain time, and on certain conditions, he may become a citizen, to remove him in an arbitrary manner before that time, would be a breach of public faith.

3. That it is inconſiſtent with the following clauſe in the conſtitution, (Art. I. ſect. 9.)

"The migration or importation of ſuch perſons as any of the ſtates now exiſting ſhall think proper to admit, ſhall not be prohibited by the Congreſs prior to the year one thouſand eight hundred and eight? but a tax or duty may be impoſed on ſuch importation, not exceeding ten dollars for each perſon." With regard to the firſt objection, viz. "That an alien ought not to be removed on ſuſpicion, but on proof of ſome crime." It is believed that it never was ſuggeſted in any other country, that *aliens* had a right to go into a foreign country, and ſtay at their will and pleaſure without any leave from the government. The law of nations, undoubtedly is, that when an alien goes into a foreign country, he goes under either an expreſs or implied ſafe conduct. In moſt countries in Europe, I believe, an expreſs paſſport is neceſſary for ſtrangers. Where greater liberality is obſerved, yet it is always underſtood that the government may order away any alien whoſe ſtay is deemed incompatible with the ſafety of the country. Nothing is more common than to order away, on the eve of a war, all aliens or ſubjects of the nation with whom the war is to take place. Why is that done, but that it is deemed unſafe to retain in the country, men whoſe prepoſſeſſions are naturally ſo ſtrong in favour of the enemy, that it may be apprehended they will either join in arms, or do miſchief by intrigue, in his favour? How many ſuch inſtances

took place at the beginning of the war with Great Britain, no body then objecting to the authority of the meaſure, and the expediency of it being alone in contemplation! In caſes like this, it is ridiculous to talk of a crime, becauſe perhaps the only crime, that a man can then be charged with, is his being born in another country, and having a ſtrong attachment to it. He is not puniſhed for a crime that he has committed, but deprived of the power of committing one hereafter to which even a ſenſe of patriotiſm may tempt a warm and miſguided mind. Nobody who has ever heard of Major Andre, that poſſeſſes any liberality of mind, but muſt believe that he did what he thought right at the time, though in my opinion it was a conduct in no manner juſtifiable. Yet how fatal might his ſucceſs have proved! If men, therefore, of good characters, and held in univerſal eſtimation for integrity, can be tempted when a great object is in view, to violate the ſtrict duties of morality, what may be expected from others who have neither character nor virtue, but ſtand ready to yield to temptations of any kind? The opportunities during a war of making uſe of men of ſuch a deſcription are ſo numerous and ſo dangerous, that no prudent nation would ever truſt to the poſſible good behaviour of many of them. Indeed moſt of theſe who oppoſe this law ſeem to admit that as to *alien enemies* the interpoſition may be proper but they contend it is improper before a war actually takes place to exerciſe ſuch an authority, and that as to *neutral aliens* it is totally inadmiſſible. To be ſure the two latter inſtances are not quite to plain, the objection I am conſidering belongs equally to them all; for if an alien cannot be removed but on conviction of a crime, then an alien enemy ought not to be removed but on conviction of treaſon, or ſome other crime ſhewing the neceſſity of it. If, however, we are not blind to what is evident to all the reſt of the world, equal danger may be apprehended from the citizens of a hoſtile power, before war is actually declared as after, perhaps more, becauſe leſs ſuſpicion is entertained; and ſome citizens of a neutral power are equally dangerous with the others. What has given France poſſeſſion of the Netherlands, Genava, Switzerland and almoſt all Italy, and enables her to domineer over ſo many other countries, lately powerful and completely independent, but that her arts have preceded her arms, the ſmooth words of amity, peace, and univerſal love, by ſeducing weak minds, have led to an unbounded confidence, which has ended in their deſtruction, and they have now to deplore the infatuation which led them to court a fraternal embrace from a boſom in which a dagger was concealed.

In how many countries, alien friends as to us, dependent upon them, are there warm partiſans not nominally French citizens but compleatly illuminated with French principles, electrified with French enthuſiaſm, and ready for any ſort of revolutionary miſchief! Are we to be guarded againſt the former and expoſed to the latter? No, gentlemen, If with ſuch examples before their eyes, congreſs had either confined their precaution to a war in form, or to citizens of France only, loſing all ſenſe of danger to their country in a regard to nominal diſtinctions, they would probably juſtly have deſerved the charge of neglecting their country's ſafety in one of its moſt eſſential points, and hereafter the very men who are now clamorous againſt them for exerciſing a judicious foreſight, might too late have had reaſon to charge them, (as many former infatuated governments in Europe may now fairly be charged by their miſerable deluded fellow citizens) as the authors of their country's

ruin. But thoſe who object to this law ſeem to pay little regard to conſiderations of this kind, and to entertain no other fear but that the Preſident may exerciſe this authority for the mere purpoſe of abuſing it. There is no end to arguments or ſuſpicions of this kind. If this power is proper it muſt be exerciſed by ſomebody. If from the nature of it it could be exercifed by ſo numerous a body as Congreſs, yet as Congreſs are not conſtantly ſitting, it ought not to be exerciſed by them alone. If they are not to exerciſe it, who ſo fit as the Preſident? What intereſt can he have in abuſing ſuch an authority? But on this occaſion, as on others of the like kind, gentlemen think it ſufficient to ſhew, not that a power is likely to be abuſed (which is all that can be prudently guarded againſt), but that it poſſibly may, and therefore to guard againſt the poſſibility of an abuſe of power, the power is not at all to be exerciſed.

The argument would be juſt as good againſt his acknowledged powers, as any others, that the legiſlature may occaſionally confide to him. Suppoſe he ſhould refuſe to nominate to any office? or to command the army or navy? or ſhould aſſign frivolous reaſons againſt every law, ſo that no law could be paſſed but with the concurrence of two thirds of both houſes! Suppoſe Congreſs ſhould raiſe an army without neceſſity, lay taxes where there was no occaſion for money, declare war from mere caprice, lay wanton and oppreſſive reſtraints on commerce, or in a time of imminent danger trifle with the ſafety of their country, to gain a momentary breath of popularity at the hazard of their country's ruin! All this they may do. Does any man of candour, who does not believe every thing they do wrong, apprehend that any of theſe things will be done? They have the power to do them becauſe the authority to paſs very important and neceſſary acts of legiſlation on all thoſe ſubjects, and in regard to which diſcretion muſt be left, unavoidably implies that as it may be exerciſed in a right manner, it may, if no principle prevent it, be exerciſed in a wrong one. If the ſtate legiſlatures ſhould combine to chooſe no more ſenators, they may aboliſh the conſtitution without the danger of committing treaſon. If to prevent a Houſe of Repreſentatives being in exiſtence, they ſhould keep no law in being for a ſimilar branch of their own, deeming the abolition of the government of the United States cheaply purchaſed by ſuch a ſacrifice, they may do this. They have the ſame power over the election of a Preſident and vice Preſident. What is the ſecurity againſt abuſe in any of theſe caſes? None, but the precautions taken to procure a proper choice, which, if well exerciſed, will at leaſt ſecure the public againſt a wanton abuſe of power, though nothing can ſecure them abſolutely againſt the common frailty of men, or the poſſibility of bad men, if accidentally inveſted with power, carrying it into a dangerous extreme. We muſt truſt ſome perſons, and as well as we can ſubmit to any collateral evil which may ariſe from a proviſion for a great and indiſpenſable good that can only be obtained through the medium of human imperfection. At the ſame time it may be obſerved, that in the caſe of the Preſident or any executive or judicial officer wantonly abuſing his truſt, he is liable to impeachment, and there are frequent opportunities of changing the members of the legiſlature, if their conduct is not acceptable to their conſtituents.

The clauſe in the conſtitution, declaring that the trial of all crimes, except by impeachment, ſhall be by jury, can never in reaſon be extended to amount to a permiſſion of perpetual reſidence of all ſorts of foreigners,

unleſs convicted of ſome crime, but is evidently calculated for the ſecurity of any citizen, a party to the inſtrument or even of a foreigner if reſident in the country, who when charged with the commiſſion of a crime againſt the municipal laws for which he is liable to puniſhment, can be tried for it in no other manner.

The ſecond objection is, "That an alien coming into the country, on the faith of an act ſtipulating that in a certain time and on certain conditions he may become a citizen, to remove him in an arbitrary manner before that time would be a breach of public faith."

With regard to this, it may be obſerved, that undoubtedly the faith of government ought under all circumſtances, and in all poſſible ſituations, to be preſerved ſacred. If therefore, in virtue of this law, all aliens from any part of the world had a right to come here, ſtay the probationary time, and become citizens, the act in queſtion could not be juſtified, unleſs it could be ſhewn that a real (not a pretended) over-ruling public neceſſity to which all inchoate acts of legiſlation muſt forever be ſubject, occaſioned a partial repeal of it. But there are certain conditions, without which no alien can ever be admitted, if he ſtay ever ſo long; and one is, that during a limited time (two years in the caſe of aliens then reſident; five in the caſe of aliens arriving after) he has behaved as a man of a good moral character, attached to the principles of the conſtitution of the United States, and well diſpoſed to the good order and happineſs of the ſame. If his conduct be different, he is no object of the naturalization law at all, and conſequently no implied compact was made with him. If his conduct be conformable to that deſcription, he is no object of the alien law to which the objection is applied, becauſe he is not a perſon whom the Preſident is empowered to remove, for ſuch a perſon could not be deemed dangerous to the peace and ſafety of the United States, nor could there be reaſonable grounds to ſuſpect ſuch a man of being concerned in any treaſonable or ſecret machinations againſt the government, in which caſes alone the removal of any alien friend is authoriſed. Beſides any alien coming to this country muſt, or ought to know, that this being an Independent nation, it has all the rights concerning the removal of aliens which belong by the law of nations to any other; that while he remains in the country in the character of an alien, he can claim no other privilege than ſuch as an alien is entitled to; and conſequently, whatever riſque he may incur in that capacity, is incurred voluntarily, with the hope that in due time by his unexceptionable conduct, he may become a citizen of the United States. As there is no end to the ingenuity of man, it has been ſuggeſted that ſuch a perſon, if not a citizen, is a denizen, and therefore cannot be removed as an alien. A denizen in thoſe laws from which we derive our own, means a perſon who has received letters of denization from the king, and under the royal government ſuch a power might undoubtedly have been exerciſed. This power of denization is a kind of partial naturalization, giving ſome, but not all the privileges of a natural born ſubject. He may take lands by purchaſe or deviſe, but cannot inherit.

The iſſue of a denizen born *before* denization cannot inherit; but if born *after* may, the anceſtor having been able to communicate to him inheritable blood. But this power of the crown was thought ſo formidable that it is expreſsly provided by act of parliament, that no denizen can be

a member of the Privy Council, or of either Houſe of Parliament, or have any office of truſt civil or military; or be capable of any grant of lands from the crown. Upon the diſſolution of the royal government, the whole authority of naturalization, either whole or partial, belonged to the ſeveral ſtates, and this power the people of the ſtates have ſince devolved on the Congreſs of the United States. Denization therefore (in the ſenſe here uſed) is a term unknown in our law, ſince the right was not derived from any general legiſlative authority, but from a ſpecial prerogative of the crown, to which parliamentary reſtrictions afterwards were applied. So much ſo, that if an act of Parliament had paſſed, giving certain rights to an alien with reſtrictions exactly ſimilar to thoſe of a denizen. I imagine he would not have been called a denizen; becauſe the royal authority was not the ſource from which his rights were derived. As to acts of naturalization themſelves, they are liable in England, by an expreſs law to certain limitations, one of which is, that the perſon naturalized is incapable of being a member of the privy council, or either houſe of parliament, or of holding offices or grants from the crown. Yet I never heard, nor do I believe that ſuch a perſon was ever called a denizen; for which, as there is no foundation in precedent, or in the conſtitution of the United States, I preſume it is a diſtinction without ſolidity. Fixed principles of law cannot be grounded on the airy imagination of man.

The third objection is, "That it is inconſiſtent with the following clauſe in the conſtitution, viz.

"The migration or importation of ſuch perſons as any of the ſtates now exiſting ſhall think proper to admit, ſhall not be prohibited by the congreſs prior to the year one thouſand eight hundred and eight, but a tax or duty may be impoſed on ſaid importation not exceeding ten dollars for each perſon."

I am not ſatisfied, as to this objection, that it is ſufficient to over-rule it, to ſay the words do not expreſs the real meaning, either of thoſe who formed the conſtitution, or thoſe who eſtabliſhed it, although I do verily believe in my own mind, that the article was intended only for ſlaves, and the clauſe was expreſſed in its preſent manner to accommodate different gentlemen, ſome of whom could not bare the name *ſlaves*, and others had objections to it. But though this probably is the real truth, yet, if in attempting to compromiſe, they have unguardedly uſed expreſſions that go beyond their meaning, and there is nothing but private hiſtory to elucidate it, I ſhall deem it abſolutely neceſſary to confine myſelf to the written inſtrument. Other reaſons may make the point doubtful, but at preſent I am inclined to think it muſt be admitted; that congreſs prior to the year 1808, cannot prohibit the migration of free perſons to a particular ſtate, exiſting at the time of the conſtitution, which ſuch ſtate ſhall, by law, agree to receive. The ſtates then exiſting, therefore, till 1808 may (we will ſay) admit the migration of perſons to their own ſtates, without any prohibitory act of congreſs.—This they may do upon principles of general policy, and in conſiſtence with all their other duties. The ſtates are expreſsly prohibited from entering into an engagement or contract with another ſtate, or engaging in war, unleſs actually invaded, or in ſuch imminent danger, as will not admit of delay. The avenues to foreign connection being thus carefully cloſed, it will ſcarcely be contended, that in caſe of war, a ſtate could, either directly or indirectly,

permit the migration of enemies. If they did, the United States could certainly without any impeachment of the general right of allowing migration, in virtue of their authority to repel invaſion, prevent the arrival of ſuch. And as ſuch invaſion may be attempted without a formal war, and Congreſs have an expreſs right to protect againſt invaſion, as well as to repel it, I preſume Congreſs would alſo have authority to prevent the arrival of any enemies, coming in the diſguiſe of friends, to invade their country. But, admitting the right to permit migration in its full force, the perſons migrating on their authority muſt be ſubject to the laws of the country, which conſiſt not only of thoſe of the particular ſtate, but of the United States. While aliens, therefore, they muſt remain in the character of aliens; and, of courſe, upon the principles I have mentioned, be ſubject to a power of removal, in certain caſes recognized in the law of nations; nor can they ceaſe to be in this ſituation, until they become citizens of the United States; in which caſe they muſt obey the laws of the union as well as of the particular ſtate they reſide in. But, gentlemen argue as if becauſe the ſtates had a right to permit migration the migrants were under a ſort of ſpecial protection of the ſtate admitting it, leſt the United States, merely to diſappoint the purpoſe of migration, ſhould exerciſe an arbitrary authority of removal without any cauſe at all. It would be juſt as conſiſtent to ſay, that if ſuch migrant was charged with a murder on the high ſeas, or in any fort or arſenal of the United States, he ſhould not be tried for it in a court of the United States, leſt the court and juries, out of ill will to the ſtate, ſhould combine to procure his conviction and puniſhment, in all events, to defeat the ſtate law. The two powers may undoubtedly be made compatible, if the legiſlatures of the particular ſtates, and the government of the United States do their duty, without which preſumption, not an authority given by the conſtitution can exiſt. They ſurely are more compatible than the collateral powers of taxation, which, under each government, go to an unlimited extent, but the very nature of which forbids any other limitation than a ſenſe of moral right and juſtice. If we ſcepticize in the manner of ſome gentlemen on this ſubject, ſuppoſe each legiſlature ſhould tax to the amount of 19s in the pound; each has the power; but is ſuch an exerciſe of it more apprehended than we apprehend an earthquake to ſwallow us all up at this very moment? All ſyſtems of government, ſuppoſe they are to be adminiſtered by men of common ſenſe and common honeſty. In our country, as all ultimately depends on the voice of the people, they have it in their power, and it is to be preſumed they generally will chuſe men of this deſcription: but if they will not, the caſe to be ſure is without remedy. If they chuſe fools, they will have fooliſh laws. If they chuſe knaves they will have knaviſh ones. But this can never be the caſe until they are generally fools or knaves themſelves, which, thank God, is not likely ever to become the character of the American people.

Having ſaid what I thought material as to the alien laws, upon the particular objections to them, I now proceed to diſcuſs the objections which have been made to what is called the ſedition act, one of which equally applies to the alien laws as well as to this. But I think it proper previouſly to read the law itſelf.

The objections (ſo far as I have heard them) to this act are as follow:

1. (And this applies to the alien law alſo) That there is no ſpecific power given to paſs an act of this deſcription, though in the particular ſpecific powers given there is authority conveyed as to other offences ſpecially named.

2. That this law is not warranted by a clauſe in the conſtitution, conveying legiſlative authority, which after deſignating particular objects, adds:

"And to make all laws which ſhall be neceſſary and proper for carrying into execution the foregoing powers, and all other power veſted by this conſtitution in the government of the United States, or in any department or officer thereof."—Becauſe it is not neceſſary and proper to paſs any ſuch law in order to carry into execution any of thoſe powers.

3. That admitting the former poſitions are not maintainable, yet the exerciſe of this authority is compatible with the following amendment to the conſtitution, viz.

"Congreſs ſhall make no law reſpecting an eſtabliſhment of religion, or prohibiting the full exerciſe thereof; or abridging the freedom of ſpeech, or of the preſs, or the right of the people peaceably to aſſemble, and to petition the government for a redreſs of grievances."

With regard to the firſt objection, I readily acknowledge, that ſoon after the conſtitution was propoſed, and when I had taken a much more ſuperficial view of it than I was ſenſible of at the time, I did think Congreſs could not provide for the puniſhment of any crimes but ſuch as are ſpecifically deſignated in the particular powers enumerated. I delivered that opinion in the convention at North-Carolina, in the year 1788, with a perfect conviction, at the time, that it was well founded. But I have ſince been convinced it was an erroneous opinion, and my reaſons for changing it I ſhall ſtate to you as clearly as I am able.

It is in vain to make any law unleſs ſome ſanction be annexed to it, to prevent or puniſh its violation. A law without it might be equivalent to a good moral ſermon, but bad members of ſociety would be as little influenced by one as the other. It is, therefore, neceſſary and proper, for inſtance, under the conſtitution of the United States, to ſecure the effect of all laws which impoſe a duty on ſome particular perſons, by providing ſome penalty or puniſhment if they diſobey. The authority to provide ſuch is conveyed by the following general words in the conſtitution, at the end of the objects of legiſlation particularly ſpecified: "To make all laws which ſhall be neceſſary and proper for carrying into execution the foregoing powers, and all other powers veſted by this conſtitution in the government of the United States, or in any department or officer thereof." A penalty alone would not in every caſe be ſufficient, for the offender might be rich and diſregard it, or poor, though a wilful offender, and unable to pay it. A fine, therefore, will not always anſwer the purpoſe, but impriſonment muſt be in many caſes added, though a wiſe and humane legiſlature will always diſpenſe with this, where the importance of the caſe does not require it. But if it does, from the very nature of the puniſhment, it becomes a *criminal*, and not a *civil* offence; the grand jury muſt indict, before the offender can be convicted.

This general poſition may be illuſtrated by a variety of inſtances under the penal code of the United States, which have, I believe, never been objected to as unconſtitutional, though there have never been wanting

penetrating and discerning members who were ready enough to take exceptions where they found any plausible ground for them. I shall enumerate a few.

In the act entitled, an act for the punishment of certain crimes against the United States (vol. 1. Swift's edition, p. 100) among other crimes specified, are the following.

Murder or larceny in a fort belonging to the United States. Misprision of felony committed in any place under the sole and exclusive jurisdiction of the United States. Stealing or falsifying a record of any court of the United States. Perjury in any court of the United States. Bribing a judge of the United States. Obstructing the execution of any kind of process issuing from a court of the United States.

In the collection act, 1 vol. p. 237, it is provided, that in all cases where an oath is by that act required from a master or other person having command of a ship or vessel, or from an owner or assignee of goods, wares, and merchandize, his or her factor or agent, if the person to swearing shall swear falsely, such person shall, on indictment and conviction thereof, be punished by fine or imprisonment, or both, in the discretion of the court, before whom such conviction shall be had, so as the fine shall not exceed one thousand dollars, and the term of imprisonment shall not exceed twelve months.

In the act laying duties on distilled spirits, (vol. 1. p. 324) in the 39th section it is provided as follows:

"If any supervisor, or other officer of inspection, in any criminal prosecution against them, shall be convicted of oppression or extortion in the execution of his office, he shall be fined not exceeding five hundred dollars, or imprisoned not exceeding six months, or both, at the discretion of the court; and shall also forfeit his office."

These instances deserve great consideration; because I believe no candid man will deny that these provisions were constitutional exercises of authority, within the scope of the general authority conveyed, though not specially named as objects which it should be competent for Congress to provide for. And they certainly derive weight from the consideration, that the principle of them (which I believe was the case) was never objected to, though the expediency of some of the provisions may have been.

In further illustration of this subject, I shall state a case which was determined in this court—The United States against Worrell, published in Mr. Dallas's reports, p. 384. Where there was an indictment against the defendant for attempting to bribe Mr. Coxe, the Commissioner of the Revenue. The defendant was found guilty, and afterwards a motion was made in arresting judgment, assigning, together with some technical objections, this general one, that the Court had no cognizance of the offence, because no act of Congress had passed creating the offence and prescribing the punishment, but it was solely on the foot of the common law. The very able and ingenious gentleman who is the reporter of that case, and was the defendant's Council in it, in the course of his argument, makes the following observations, part of which are remarkably striking and pertinent to my present subject: "In relation to crimes and punish-"ments, the objects of the delegated power of the United States are enu-"merated and fixed. Congress may provide for the punishment of coun-"terfeiting the securities and current coin of the United States; and

" may define and punish piracies and felonies committed on the high seas, " and offences against the law of nations. Art. i. 8. And so, likewise, " *Congress may make all laws which shall be necessary and proper for car-* " *rying into execution, the powers of the General Government.* But here " is no reference to a common law authority: Every power is matter of " definite and positive grant; and the very powers that are granted cannot " take effect until they are exercised through the medium of a law. " Congress had undoubtedly a power to make a law, which should render " it criminal to offer a bribe to the commissioner of the Revenue; but " not having made the law, the crime is not recognized by the Federal " code, Constitutional or Legislative; and consequently, it is not a sub- " ject on which the Judicial authority of the Union can operate." So far the observations of the defendant's Counsel. Judge Chase, who on that occasion differed from Judge Peters, as to the common law jurisdiction of the Court, held, that under the 8th section of the first article, which I am now considering, although bribery is not among the crimes and offences specially mentioned, it is certainly included in that general provision; and Congress might have passed a law on the subject which would have given the Court cognizance of the offence. Judge Peters was of opinion, that the defendant was punishable at common law; but that it was competent for Congress to pass a Legislative act on the subject.

I conclude, therefore, that the first objection is not maintainable.

With regard to the second objection, which is, that this law is not warranted by that clause in the constitution authorising Congress to pass all laws which shall be necessary and proper, for carrying into execution, the powers specially enumerated, and all other powers vested, by the constitution, in the government of the United States, or in any department or officer thereof: because, it is not necessary and proper to pass any such law, in order to carry into execution any of those powers—it is to be observed, that, from the very nature of the power, it is, and must be, discretionary.—What is necessary and proper, in regard to any particular subject, cannot, before an occasion arises, be logically defined; but must depend upon various extensive views of a case, which no human foresight can reach. What is necessary and proper in a time of confusion and general disorder, would not, perhaps, be necessary and proper in a time of tranquillity and order. These are considerations of policy, not questions of law, and upon which the legislature is bound to decide according to its real opinion of the necessity and propriety of any act particularly in contemplation. It is, however, alledged, that the necessity and propriety of passing collateral laws for the support of others, is confined to cases where the powers are delegated, and does not extend to cases which have a reference to general danger only. The words are general, " for carry- " ing into execution the special powers previously enumerated, and all " other powers vested by the constitution in the government of the Uni- " ted States, or any department or officer thereof." If, therefore, there be any thing necessary and proper for carrying into execution any or all of those powers, I presume, that may be constitutionally enacted. Two objects are aimed at by every rational government, more especially by free ones; 1. That the people may understand the laws, and voluntarily obey them. 2. That if this be not done by any individual, he shall be compelled to obey them, or punished for disobedience. The first object is,

undoubtedly the moſt momentous ; for, as the legitimate object of every government is the happineſs of the people committed to its care, nothing can tend more to promote this than that, by a voluntary obedience to the laws of the country, they ſhould render puniſhments unneceſſary. This can never be the caſe in any country but a country of ſlaves, where groſs miſrepreſentation prevails, and any large body of the people can be induced to believe that laws are made either without authority, or for the purpoſe of oppreſſion. Aſk the great body of the people who were deluded into an inſurrection in the weſtern parts of Pennſylvania, what gave riſe to it? They will not heſitate to ſay, that the government had been vilely miſrepreſented, and made to appear to them in a character directly the reverſe of what they deſerved. In conſequence of ſuch miſrepreſentations, a civil war had nearly deſolated our country, and a certain expence of near two millions of dollars was actually incurred, which might be deemed the price of libels, and among other cauſes made neceſſary a judicious and moderate land tax, which no man denies to be conſtitutional, but is now made the pretext of another inſurrection. The liberty of the preſs is, indeed, valuable—long may it preſerve its luſtre ! It has converted barbarous nations into civilized ones—taught ſcience to rear its head—enlarged the capacity—increaſed the comforts of private life—and, leading the banners of freedom, has extended her ſway where her very name was unknown. But, as every human bleſſing is attended with imperfection, as what produces, by a right uſe, the greateſt good, is productive of the greateſt evil in its abuſe, ſo this, one of the greateſt bleſſings ever beſtowed by Providence on his creatures, is capable of producing the greateſt good or the greateſt miſchief. A pen, in the hands of an able and virtuous man, may enlighten a whole nation, and, by obſervations of real wiſdom, grounded on pure morality, may lead it to the path of honour and happineſs.—The ſame pen in the hands of a man equally able, but with vices as great as the other's virtues, may, by arts of ſophiſtry eaſily attainable, and inflaming the paſſions of weak minds, delude many into opinions the moſt dangerous, and conduct them to actions the moſt criminal. Men who are at a diſtance from the ſource of information muſt rely almoſt altogether on the accounts they receive from others. If their accounts are founded in truth, their heads or hearts muſt be to blame, if they think or act wrongly. But, if their accounts are falſe, the beſt head and the beſt heart cannot be proof againſt their influence ; nor is it poſſible to calculate the combined effect of innumerable artifices, either by direct falſehood, or invidious inſinuations, told day by day, upon minds both able and virtuous. Such being unqueſtionably the caſe, can it be tolerated in any civilized ſociety that any ſhould be permitted with impunity to tell falſehoods to the people, with an expreſs intention to deceive them, and lead them into diſcontent, if not into inſurrection, which is ſo apt to follow ? It is believed no government in the world ever was without ſuch a power. It is, unqueſtionably poſſeſſed by all the ſtate governments, and probably has been exerciſed in all of them : Sure I am, it has in ſome. If neceſſary and proper for them, why not equally ſo, at leaſt, for the government of the United States, naturally an object of more jealouſy and alarm, becauſe it has greater concerns to provide for ? Combinations to defeat a particular law are admitted to be puniſhable. Falſehoods, in order to produce ſuch combinations, I ſhould preſume, would come within

the ſame principle, as being the firſt ſtep to the miſchief intended to be prevented ; and if ſuch falſehoods, with regard to one particular law, are dangerous, and therefore ought not to be permitted without puniſhment—Why ſhould ſuch which are intended to deſtroy confidence in government altogether, and, thus, induce diſobedience to every act of it ? It is ſaid, libels may be rightly puniſhable in monarchies, but there is not the ſame neceſſity in a republic. The neceſſity in the latter caſe, I conceive greater, becauſe in a republic more is dependent on the good opinion of the people for its ſupport, as they are directly or indirectly the origin of all authority, which of courſe muſt receive its bias from them. Take away from a republic the confidence of the people, and the whole fabric crumbles into duſt.

I have only to add, under this head, that in order to obviate any probable ill uſe of this large and diſcretionary power, the conſtitution and certain amendments to it, have prohibited in expreſs words the exerciſe of ſome particular authorities which otherwiſe might be ſuppoſed to be comprehended within them. Of this nature is the prohibitory clauſe relating to the preſent object which I am to conſider under the next objection.

4. That objection is, That the act is in violation of this amendment of the conſtitution. (3d vol. Swift's Edition, p, 455. Article 3d.)

" Congreſs ſhall make no law reſpecting an eſtabliſhment of religion, or " prohibiting the free exerciſe thereof ; or abridging the freedom of " ſpeech, or of the preſs, or the right of the people peaceably to aſſemble, " and to petition the government for a redreſs of grievances."

The queſtion then is,

Whether this law has abridged the freedom of the preſs ?

Here is a remarkable difference in expreſſions as to the different objects in the ſame clauſe. They are to make no law *respecting* an eſtabliſhment of religion, or prohibiting the free exerciſe thereof : or *abridging* the freedom of ſpeech, or of the preſs. When as to one object they entirely prohibit any act whatever, and as to another object only limit the exerciſe of the power, they muſt in reaſon be ſuppoſed to mean different things. I preſume, therefore, that Congreſs may make a law *reſpecting* the preſs, provided the law be ſuch as not to *abridge its freedom*. What might be deemed the freedom of the preſs, if it had been a new ſubject, and never before in diſcuſſion, might indeed admit of ſome controverſy.—But ſo far as precedent habit, laws and practices are concerned, there can ſcarcely be a more definite meaning than that which all theſe have affixed to the term in queſtion.

We derive our principles of law originally from England. There the preſs, I believe, is as free as in any country of the world, and ſo it has been for near a century. The definition of it is, in my opinion, no where more happily or juſtly expreſſed than by the great Author of the Commentaries on the Laws of England, which book deſerves more particular regard on this occaſion, becauſe for near 30 years it has been the manual of almoſt every ſtudent of law in the United States, and its uncommon excellence has alſo introduced it into the libraries, and often to the favourite reading of private gentlemen ; ſo that his views of the ſubject could ſcarcely be unknown to thoſe who framed the Amendments to the conſtitution, and if they were not, unleſs his explanation had been ſatisfactory, I preſume the Amendment would have been more particularly worded, to guard againſt any poſſible miſtake. His explanation is as follows :

" The Liberty of the Preſs is indeed eſſential to the nature of a free " ſtate. And this conſiſts in laying no *previous* reſtraints upon publicati- " ons, and not in freedom from cenſure for criminal matter when publiſh- " ed. Every freeman has an undoubted right to lay what ſentiments he " pleaſes before the public ; to forbid this, is to deſtroy the freedom of the " preſs : but if he publiſhes what is improper, miſchievous, or illegal, he " muſt take the conſequence of his own temerity. To ſubject the preſs " to the reſtrictive power of a Licenſer, as was formerly done, both before " and ſince the revolution, is to ſubject all freedom of ſentiment to the " prejudices of one man, and make him the arbitrary and infallible judge " of all controverſial points in learning, religion, and government. But " to puniſh (as the law does at preſent) any dangerous or offenſive writ- " ings, which, when publiſhed, ſhall on a fair and impartial trial be ad- " judged of a pernicious tendency, is neceſſary for the preſervation of " peace and good order, of government and religion, the only ſolid foun- " dations of civil liberty. Thus the will of individuals is ſtill left free ; " the abuſe only of that free will is the object of legal puniſhment. Nei- " ther is any reſtraint hereby laid upon freedom of thought or enquiry : " liberty of private ſentiment is ſtill left ; the diſſeminating or making " public, of bad ſentiments, deſtructive of the ends of ſociety, is the crime " which ſociety corrects. A man (ſays a fine writer on this ſubject) may " be allowed to keep poiſons in his cloſet, but not publicly to vend them " as cordials. And to this we may add, that the only plauſible argument " heretofore uſed for the reſtraining the juſt freedom of the preſs, " that " it was neceſſary to prevent the daily abuſe of it," will entirely loſe its " force when it is ſhewn (by a reaſonable exerciſe of the laws) that the " preſs cannot be abuſed to any bad purpoſe, without incurring a ſuitable " puniſhment : whereas it never can be uſed to any good one, when under " the controul of an Inſpector. So true will it be found, that to cenſure " the licentiouſneſs, is to maintain the liberty of the preſs." 4 Black. Com. 151.

It is believed, that in every ſtate in the union the common law principles concerning libels apply ; and in ſome of the ſtates words ſimilar to the words of the amendment are uſed in the conſtitution itſelf, or a contemporary bill of rights of equal authority, without ever being ſuppoſed to exclude any law being paſſed on the ſubject. So that there is the ſtrongeſt proof that can be of a univerſal concurrence in America on this point, that the freedom of the preſs does not require that libellers ſhall be protected from puniſhment.

But in ſome reſpects the act of congreſs is much more reſtrictive than the principles of the common law, or than perhaps the principles of any ſtate in the union. For under the law of the United States the truth of the matter may be given in evidence, which at common law in criminal proſecutions was held not to be admiſſible ; and the puniſhment of fine and impriſonment, which at common law was diſcretionary, is limited in point of ſeverity, though not of lenity. It is to be obſerved too, that by the expreſs words of the act both malice and falſhood muſt combine in the publication, with the ſeditious intent particularly deſcribed. So that if the writing be falſe, yet not malicious, or malicious, and not falſe, no conviction can take place. This therefore fully provides for any publication ariſing from inadvertency, miſtake, falſe confidence, or any thing

ſhort of a wilful and atrocious falſhood. And none ſurely will contend that the publication of ſuch a falſhood is among the indefeaſible rights of men, for that would be to make the freedom of liars greater than that of men of truth and integrity.

I have now ſaid all I thought material on theſe important ſubjects. There is another upon which it is painful to ſpeak, but the notoriety as well as the official certainty of the fact, and the importance of the danger make it indiſpenſable. Such inceſſant calumnies have been poured againſt the government for ſuppoſed breaches of the conſtitution, that an inſurrection has lately began for a cauſe where no breach of the conſtitution is or can be pretended. The grievance is the land tax act, an act which the public exigencies rendered unavoidable, and is framed with particular anxiety to avoid its falling oppreſſively on the poor, and in effect the greateſt part of it muſt fall on rich people only. Yet arms have been taken to oppoſe its execution: officers have been inſulted: the authority of the law reſiſted: and the government of the United States treated with the utmoſt defiance and contempt. Not being thoroughly informed of all particulars, I cannot now ſay within what claſs of offences theſe crimes are comprehended. But as ſome of the offenders are committed for treaſon, and many certainly have been guilty of combinations to reſiſt the law of the United States, I think it proper to point your attention particularly to thoſe ſubjects. The proviſions in regard to the former, ſo far as they may at preſent be deemed material or inſtructive, are as follow:

(Here the paſſages referred to were read.)

The only ſpecies of treaſon likely to come before you is that of levying war againſt the United States. There have been various opinions, and different determinations on the import of thoſe words. But I think I am warranted in ſaying, that if in the caſe of the inſurgents who may come under your conſideration the intention was to prevent by force of arms the execution of any act, of the Congreſs of the United States altogether (as for inſtance the land tax act, the object of their oppoſition) any forcible oppoſition calculated to carry that intention into effect was a levying of war againſt the United States, and of courſe an act of treaſon. But if the intention was, merely to defeat its operation in a particular inſtance, or through the agency of a particular officer, from ſome private or perſonal motive, though a higher offence may have been committed, it did not amount to the crime of treaſon. The particular motive muſt however be the ſole ingredient in the caſe, for if combined with a general view to obſtruct the execution of the act, the offence muſt be deemed treaſon.

With regard to the number of witneſſes in treaſon, I am of opinion that two are neceſſary on the indictment as well as upon the trial in court.

The proviſion in the conſtitution, that the two witneſſes muſt be to the ſame overt-act, (or actual deed conſtituting the treaſonable offence) was in conſequence of a conſtruction which had prevailed in England, that though two witneſſes were required to prove an act of treaſon, yet if one witneſs proved one act, and another witneſs another act of the ſame ſpecies of treaſon, (as for inſtance that of levying war) it was ſufficient; a deciſion which has always appeared to me contrary to the true intention of the law which made two witneſſes neceſſary—this proviſion being, as I conceived, intended to guard againſt fictitious charges of treaſon, which an un-

principled government might be tempted to support and encourage, even at the expence of perjury, a thing much more difficult to be effected by two witneſſes than one.

An act of Congreſs which I have already read to you (that commonly called the ſedition act) has ſpecially provided in the manner you have heard, againſt combinations to defeat the execution of the laws. The combinations puniſhable under this act muſt be diſtinguiſhed from ſuch as in themſelves amount to treaſon, which is unalterably fixed by the conſtitution itſelf. Any combinations, therefore, which before the paſſing of this act, would have amounted to treaſon, ſtill conſtitute the ſame crime. To give the act in queſtion a different conſtruction, would do away altogether the crime of treaſon as committed by levying war, becauſe no war can be levied without a combination for ſome of the purpoſes ſtated in the act, which muſt neceſſarily conſtitute a part though not the whole of the offence.

Long, gentlemen, as I have detained you, for which the great importance of the occaſion, I truſt, is a juſt apology, it will be uſeful to recollect, that ever ſince the firſt formation of the preſent government, every act which any extraordinary difficulty has occaſioned, has been uniformly oppoſed before its adoption, and every art practiſed to make the people diſcontented after it: without any allowance for the neceſſity which dictated them ſome ſeem to have taken it for granted that credit could be obtained without juſtice, money without taxes, and the honour and ſafety of the United States only preſerved by a diſgraceful foreign dependence. But, notwithſtanding all the efforts made to villify and undermine the government, it has uniformly roſe in the eſteem and confidence of the people. Time has diſproved arrogant predictions; a true knowledge of the principles and conduct of the government has rectified many groſs miſrepreſentations; credit has riſen from its aſhes; the country has been found full of reſources, which have been drawn without oppreſſion, and faithfully applied to the purpoſes to which they were appropriated; juſtice is impartially adminiſtered; and the only crime which is fairly imputable is, that the minority have not been ſuffered to govern the majority, to which they had as little pretenſion upon the ground of ſuperiority of talents, patriotiſm, or general probity, as upon the principles of republicaniſm, the perpetual theme of their declamation. If you ſuffer this government to be deſtroyed, what chance have you for any other? A ſcene of the moſt dreadful confuſion muſt enſue. Anarchy will ride triumphant, and all lovers of order, decency, truth and juſtice be trampled under foot. May that God whoſe peculiar providence ſeems often to have interpoſed to ſave theſe United States from deſtruction, preſerve us from this worſt of all evils! And may the inhabitants of this happy country deſerve his care and protection by a conduct beſt calculated to obtain them.

Philadelphia, May 15, 1799.

SIR,

THE Grand Jury of the Circuit court of the Diſtrict of Pennſylvania, have heard with great ſatisfaction, the Charge delivered to them, on the opening of the Court.

At a time like the preſent, when falſe philoſophy and the moſt danger-

ous and wicked principles are spreading with rapidity, under the imposing garb of Liberty, over the fairest countries of the Old World—they are convinced, that the publication of a Charge, fraught with such clear and just observations on the nature and operation of the constitution and laws of the United States will be highly beneficial to the citizens thereof.

With these sentiments strongly impressed on their minds, they unanimously request, that a copy of the said charge may be delivered to them, for publication; especially for the information of those, who are too easily led by the misrepresentations of evil disposed persons, into the commission of crimes, ruinous to themselves, and against the peace and dignity of the United States.

Isaac Wharton, Foreman, J. Ross, Edward Pennington, Philip Nicklin, Joseph Parker Norris, Benjamin W. Morris, Thomas M. Willing, Robert Ralston, John Craig, Samuel Coates, David H. Conyngham, John Perot, James C. Fisher, Daniel Smith, Gideon Hill Wells, William Montgomery, W. Bulkley.

Honorable Judge IREDELL.

To the Gentlemen of the Grand Jury of the United States, for the district of Pennsylvania.

Gentlemen,

I receive with great sensibility the honor of this address, from gentlemen whom I personally respect so much. Believing, as I have long done, that the constitution and laws of the United States afford the highest degree of rational liberty which the world ever saw, or of which perhaps mankind are capable, I have seen with astonishment and regret, attempts made in the pursuit of visionary chimeras, to subvert or undermine so glorious a fabric, equally constructed for public and private security. It cannot but be extremely pleasing to me, that the sentiments on this subject I delivered in my charge, should meet with your entire approbation; and as you are pleased to suppose the publication of them may be of some service in correcting erroneous opinions, I readily consent to it, considering your sanction of them as giving them an additional value, which will increase the hope of their producing a good effect.

JAMES IREDELL.

Philadelphia, May 13, 1799.

WEDNESDAY, MAY 1, *Ten o'clock A. M.*

INDICTMENT.

IN THE CIRCUIT COURT OF THE UNITED STATES OF AMERICA, IN AND FOR THE PENNSYLVANIA DISTRICT OF THE MIDDLE CIRCUIT.

THE GRAND INQUEST of the United States of America, for the Pennſylvania Diſtrict, upon their reſpective oaths and affirmations, do preſent, That John Fries, late of the county of Bucks, in the Diſtrict of of Pennſylvania, he being an inhabitant of, and reſiding within, the ſaid United States, to wit, in the diſtrict aforeſaid, and under the protection of the laws of the ſaid United States, and owing allegiance and fidelity to the ſame United States, not having the fear of God before his eyes, nor weighing the duty of his ſaid allegiance and fidelity, but being moved and ſeduced by the inſtigation of the devil, wickedly deviſing and intending the peace and tranquility of the ſaid United States to diſturb, on the Seventh day of March, in the year of our Lord one thouſand ſeven hundred and ninety nine at Bethlehem, in the county of Northampton, in the diſtrict aforeſaid, unlawfully, maliciouſly and traitorouſly did compaſs, imagine and intend to raiſe and levy war, inſurrection and rebellion againſt the ſaid United States; and to fulfil and bring to effect the ſaid traitorous compaſſings, imaginations and intentions of him the ſaid John Fries, he, the ſaid John Fries afterwards, that is to ſay, on the ſaid Seventh day of March in the ſaid year of our Lord one thouſand ſeven hundred and ninety nine, at the ſaid county of Northampton in the diſtrict aforeſaid, with a great multitude of perſons, whoſe names at preſent are unknown to the Grand Inqueſt aforeſaid, to a great number, to wit, to the number of one hundred perſons and upwards, armed and arrayed in a warlike manner, that is to ſay, with guns, ſwords, clubs, ſtaves and other warlike weapons, as well offenſive as defenſive, being then and there unlawfully, maliciouſly and traitorouſly aſſembled and gathered together, did falſely and traitorouſly aſſemble and join themſelves together againſt the ſaid United States, and then and there, with force and arms, did falſely and traitorouſly, and in a warlike and hoſtile manner, array and diſpoſe themſelves againſt the ſaid United States, and then and there, with force and arms, in purſuance of ſuch their traitorous intentions and purpoſes aforeſaid, he the ſaid John Fries with the ſaid perſons ſo as aforeſaid traitorouſly aſſembled, and armed and arrayed in manner aforeſaid, moſt wickedly, maliciouſly and traitorouſly did ordain, prepare and levy public war againſt the ſaid United States, contrary to the duty of his ſaid allegiance and fidelity, againſt the conſtitution, peace and dignity of the ſaid United States, and alſo againſt the form of the act of the Congreſs of the ſaid United States, in ſuch caſe made and provided.

WILLIAM RAWLE,
Attorney of the United States
for the Pennſylvania Diſtrict.

The priſoner having been ſet to the bar, pleaded NOT GUILTY.

The pettit jury impannelled, conſiſted of the following gentlemen :

WILLIAM JOLLY, City
SAMUEL MITCHELL, Bucks
RICHARD LEEDOM, ditto
ANTHONY CUTHBERT, City
ALEXANDER FULLERTON, City
JOHN SINGER, City
WILLIAM RAMSAY, Bucks
SAMUEL RICHARDS, City
GERARDUS WYNKOOP, Bucks
JOSEPH HORNTON, City
PHILIP WALTER, Northampton
JOHN RHOAD, Northampton.

Some difficulties aroſe as to the two latter gentlemen being qualified, they being Germans, and not ſufficiently underſtanding the Engliſh language : however it was agreed that any difficulties of that nature might be explained to them, and it was urged that they would underſtand many of the witneſſes better than others, ſeveral of thoſe being Germans alſo, and could not ſpeak Engliſh, on which account Mr. Erdman was ſworn for interpreter.

MR. SITGREAVES opened the trial as follows :

GENTLEMEN OF THE JURY,

BY the indictment which has been juſt read to you, you perceive that John Fries, the priſoner at the bar, has put himſelf on trial before you, on an accuſation of having committed the greateſt offence which can be perpetrated in this, or any other country, and it will devolve on you to determine, according to the evidence which will be produced to you, on the important queſtion of life or death. It is the duty of thoſe that proſecute, to open to you, as clear as they are able, thoſe principles of law which apply to the offender, and then to ſtate to you the teſtimony with which the accuſation is ſupported. This duty has devolved upon me, and I hope, while I regard my duty as accuſer, I ſhall do it in ſuch a way as ſhall do no injuſtice to the priſoner. However, if I ſhould be incorrect, there are ſufficient opportunities for me to be corrected by the vigilance which the council engaged on behalf of the priſoner will uſe, and the order which the court will obſerve. Theſe are ſufficient to correct any miſ-ſtatements, but I will uſe my utmoſt endeavours to be guilty of none.

The priſoner is indicted of the crime of treaſon. Treaſon is defined in the conſtitution of the United States, Section 3. Art. 3. in the words following :

" Treaſon againſt the United States, ſhall conſiſt only in levying war againſt them, or in adhering to their enemies, giving them aid and comfort."

This crime appears to be limited to two deſcriptions : the one, levying war againſt the United States, and the other adhering to its enemies. With reſpect to the latter branch of the deſcription, there will be no oc-

caſion for any explanation, or to call your attention in the leaſt to it, because it is not charged upon the priſoner; he is charged with having committed treaſon in levying war.

This expreſſion, phraſeology, or deſcription as adopted by our conſtitution, is borrowed from a ſtatute of Great Britain, paſſed in the reign of Edward III. which has, ever ſince it paſſed, commanded the veneration and reſpect of that nation, almoſt equal with their great charter: it is conſidered as a great ſecurity to their liberties. Indeed the uniform and unanimous conſent given to this ſtatute, through a great lapſe of time, by the moſt able writers on law; its never having undergone the leaſt alteration amidſt the moſt ſevere ſcrutinies, and its adoption into the conſtitution of the United States, without the leaſt amendment, are ſufficient encomiums to prove its worth. I ſhall ſtate to you, as far as is neceſſary to the preſent application of that ſtatute, the moſt able and judicious expoſitions, but without recurring to a variety of authorities which might be quoted.

The crime of treaſon, as it has been laid down by thoſe writers, generally allowed to be the moſt able on law, whoſe accuracy is unqueſtionable, is the higheſt crime that can poſſibly be committed againſt the good government of a nation, and a conſiderable inroad into the liberties of a ſubject. In diſcuſſing this crime I ſhall only recur to the notes which I have taken, and my own knowledge of the law; if that ſtatement ſhould be inaccurate, there are ſufficient opportunities for amendment in the courſe of this trial. Treaſon conſiſts in levying war againſt the government of the United States: it may confidently be ſaid not only to conſiſt in joining or aiding the hoſtile intentions of a foreign enemy; nor is it confined to rebellion in the broad ſenſe in which that word is generally underſtood; or in the utter ſubverſion of the government and its fundamental inſtitutions: but it alſo conſiſts in the raiſing a military force from among the people for the purpoſe of attaining any object with a deſign of oppoſing the lawful authority of the government by dint of arms, in ſome matter of public concern in which the inſurgents have no particular intereſt diſtinct from the reſt of the community. This is the beſt deſcription of the crime of treaſon, as it relates to the matter before you, which I am able to give. A tumultuouſly raiſing the people with force, for the purpoſe of ſubverting, or oppoſing the lawful authority of the government in which thoſe inſurgents have no particular intereſt diſtinct from the people at large.

Agreeable to the diviſion made in the definition of treaſon by Lord Hale, it muſt conſiſt both in levying war, and in levying war againſt the government of the United States. Reſpecting levying of war, it is to be underſtood, agreeable to the moſt approved authorities, that there muſt be an actual military array. I mention this because I think it proper to be particular in ſo eſſential and important an enquiry, and becauſe I think we ſhall prove to you that this was actually done by the priſoner. Another thing I wiſh you to bear in mind is, that war may be ſufficiently levied againſt the United States, although no violence be uſed, and although no battle be fought. It is not neceſſary that actual violence ſhould take place, to prove the actual waging of war. If the arrangements are made, and the numbers of armed men actually appear, ſo as to procure the object which they have in view by intimidation, as well as by actual force, that will conſtitute the offence.

It muſt be war waged againſt the United States. This is an important diſtinction. A large aſſemblage of people may come together; in whatever numbers; however they may be armed or arrayed, or whatever degree of violence they may commit, yet that alone would not conſtitute treaſon: the treaſon muſt be known; it muſt be for a public and not a private revenge; it muſt be avowedly levying war againſt the United States; if people aſſemble in this hoſtile manner only to gratify revenge, or any other purpoſe independent of war againſt the United States, it will only amount to a riot; but if it is an object in which the perſon has no particular intereſt, this conſtitutes the offense of treaſon. There are a variety of inſtances which might be produced in order to illuſtrate this definition of the law, but it is not neceſſary to turn to them. Suffice it to ſay that it is the intention or end for which an inſurrection is raiſed, which conſtitutes the crime. This of courſe you will have in mind when the teſtimony is gone into. I will juſt obſerve, as applicable to this caſe, that one inſtance which is defined, of the crime of treaſon is, to defeat the operation of the laws of the government; any inſurrection, I will be bold to ſay, to defeat the execution of the public laws, amounts to treaſon. Having given you this explanation of treaſon, ſo far as I ſuppoſe is connected with the preſent awful occaſion, I ſhall now proceed to ſtate the amount of evidence we mean to produce, in order to prove that the unhappy priſoner was guilty of that high crime.

It will appear, gentlemen, from the teſtimony which will be preſented to you, that during the latter months of the year 1798 diſcords prevailed to an enormous extent throughout a large portion of the counties of Bucks, Northampton, and Montgomery, and that conſiderable difficulties attended the aſſeſſors for the direct tax in the execution of the duties of their aſſeſſment. It is not in the nature of this enquiry to explain for what purpoſe, or by what means the oppoſition was made: it is not neceſſary to ſay whether the complaints urged were well or ill founded, becauſe it is a ſettled point that any inſurrection for removing public grievances, whether the complaints be real or pretended, amounts to treaſon, becauſe it is not the mode pointed out by law for obtaining redreſs. It will then be ſufficient to ſhow you that diſcontents did exiſt, and that in various townſhips of thoſe counties; that in ſeveral townſhips, aſſociations of the people were actually formed, in order to prevent the perſons charged with the execution of thoſe laws of the United States from performing their duty upon them, and more particularly to prevent the aſſeſſors from meaſuring their houſes: this oppoſition was made at many public townſhip meetings called for the purpoſe, in many inſtances reſolutions were entered into, and reduced to writing, ſolemnly forewarning the officers whoſe duty it was to execute the laws, and theſe, many times accompanied with threats if they ſhould perform that duty. Not only ſo, but diſcontents prevailed to ſuch an height, that even the friends of the government in that part were compleatly ſuppreſſed, by menaces againſt any who ſhould aſſiſt thoſe officers in their duty: repeated declarations were made, both at public, as well as at private meetings, that if any perſon ſhould be arreſted by the civil authority, ſuch arreſt would be followed by the riſing of the people, in oppoſition to that authority, for the purpoſe of reſcuing ſuch arreſted priſoners: it will appear to you farther, gentlemen, in the courſe of evidence, that during thoſe diſcontents, indefatigable pains were taken by thoſe who were charged with

the execution of the laws, to calm the fears, and to remove the miſapprehenſions of the infatuated people; for this purpoſe they read and explained the law to them, and informed them that they were miſled into the idea that the law was not in force, for that it actually was; at the ſame time warning them of the conſequences which would flow from oppoſition, and this was accompanied with promiſes that even their moſt capricious wiſhes would be gratified on their obedience. The favour was in many inſtances granted, that where any oppoſition was made to any certain perſon executing the office of aſſeſſor, in ſome townſhips propoſals were made for the people to chooſe for themſelves, but notwithſtanding this accommodating offer, the oppoſition continued.

After having ſhowed to you the general extent of this combination and dangerous conſpiracy, which exiſted in all the latitude I have opened to your view, we ſhall next give in evidence full proof, that the conſequences were, actual oppoſition and reſiſtance: in ſome parts violence was actually uſed, and the aſſeſſors were taken and impriſoned by armed parties, and in other mobs aſſembled to compel them, either to deliver up their papers, or to reſign their commiſſions; that in ſome inſtances they were threatened with bodily harm, ſo that in thoſe parts, the obnoxious law did remain unexecuted in conſequence of this alarm. Seeing the ſtate of inſurrection and rebellion had ariſen to ſuch a height, it became neceſſary, in order to ſupport the dignity, and indeed the very exiſtence of the government, that ſome means ſhould be adopted to compel the execution of thoſe laws, and warrants were in conſequence iſſued againſt certain perſons who had ſo oppoſed the laws: theſe proceſſes being put into the hands of the marſhal of the diſtrict, were ſerved upon ſome of them: in ſome inſtances during the execution of that duty the marſhal met with inſult, and almoſt with violence: having however, got nearly the whole of the warrants ſerved, he appointed head quarters for theſe priſoners to rendezvous at Bethelem, where ſome of them were to enter bail for their appearance in the city, and others were to come to the city in cuſtody, for trial. It will appear to you, that on the day thus appointed for the priſoners to meet, and when a number of them had actually aſſembled agreeable to appointment, that a number,—parties in arms, both horſe and foot, more than an hundred men, accoutred with all their military apparatus, commanded in ſome inſtances by their proper officers, marched to Bethlehem, collected before the houſe in which were the marſhal and priſoners, whom they demanded to be delivered up to them, and in conſequence of refuſal, they proceeded to act very little ſhort of actual hoſtility, ſo that the marſhal deemed it prudent to accede to their demands, and the priſoners were liberated.

This, gentlemen, is the general hiſtory of the inſurrection, I ſhall now ſtate to you the part which the unfortunate priſoner at the bar took in thoſe hoſtile tranſactions. It will appear that the priſoner is an inhabitant of the townſhip of lower Milford in the county of Bucks, that ſometime in February laſt a public meeting was held at the houſe of one John Kline in that townſhip, to conſider in relation to this houſe tax, what was to be done: that at that meeting certain reſolutions were entered into, and a paper ſigned; (we have endeavoured to trace this paper, ſo as to produce it to the court and jury, but have failed) this paper was ſigned by fifty two perſons and committed to the hands of one of their num-

ber; John Fries was present at this meeting, and assisted in drawing up the paper, at which time his expressions against this law were extremely violent, and he threatened to shoot one of the assessors. Mr. Foulke, through the legs if he did proceed to assess the houses. At this, the prisoner, at a vendue, threatened another of the assessors, Mr. S. Clarke, that if he attempted to go on with the assessments he should be committed to an old stable, and there fed on rotten corn: we shall further prove that upon its being intimated by some of them to Mr. Chapman, principal assessor, that if they might choose their own assistants things would go on quietly, he directed that they should do so, but still they continued in opposition to the law, and would not choose an assessor at all. A general meeting was called to read and explain the law to the people, and thus remove any wrong impressions and mis-apprehensions: the principal assessor was at that meeting, but the rudeness, opposition and violence, used by the people, prevented him from doing so, which was an evident proof that they did not want to hear the law, and that they understood enough of it to oppose it: thus the benevolent intentions of that meeting was frustrated. We shall farther show you that the assessor of lower Milford was intimidated so as to decline making the assessments, and that the principal assessor together with three other assessors, were obliged to go into that township to execute the law; that they proceeded in the execution of their duty during a part of the day of the 5th of March last, without any impediment; that at eleven o'clock in the morning, Mr. Chapman met, at the house of Jacob Fries in lower Milford, with the prisoner, when he, the prisoner, declared his determination not to submit, but to oppose the law, and that by the next morning he could raise 700 men in opposition to it: that upon Mr. Chapman telling him, that many houses were assessed, the prisoner flew into a violent passion, absolutely declaring that it should soon be in this country as it was in France. We shall farther shew you, that at another time during the same day the prisoner met with two of the assessors Mr. Rodrick and Mr. Foulke, whom he warned not to proceed in the execution of their duty, accompanied with threats that if they did, they would be hurt, and left them in a great rage. Farther, he proceeded to collect parties, with whom he went in search of those men, and attacked them in executing their duty, one of them escaped, but the other he took, but not having got Mr. Roderick, who appeared to be a particular object of resentment, he let Mr. Foulke go, telling him he would have them again the next day. He told Mr. Clarke that if he had met with Rodrick he would not have let him go so easy, and declared to him solemnly and repeatedly, that it was his determination to oppose the laws. We shall farther show you that, after having discharged Foulke, he proceeded to collect a large party in the township, in order to take the assessors the next day. Accordingly on the day following a numerous party, to wit, about 50 or 60, the greatest part of whom were in arms, collected together and pursued the assessors, and not finding them in that township, pursued them into another, in order, not only to chase them out of the township, but generally to prevent them executing their duty. This party collected, not only many of them in arms, but in military array, with drum and fife, and commanded by this Captain Fries and one Kuyder: Fries himself was armed with a large horse pistol. Thus equipped, they went to Quaker town, in order to accomplish

their purpoſe, where they found the aſſeſſors, two of whom they took, but Rodrick fled. Fries ordered his men to fire at the man who fled, and the piece was ſnapped, but did not go off. Fries did then compel Foulke to deliver up to them his papers, but not finding in them what they expected, they were returned, but at the ſame time exacting a promiſe that he, the aſſeſſor, ſhould not proceed in the valuation of the houſes in lower Milford. Fries was in many inſtances extremely violent againſt this law, and preremptory in his determination not to ſubmit to it, as will appear by the evidence.

When they left Quaker town they met with a travelling man who expreſſed ſome good will towards the government, and for that expreſſion, they mal-treated him very much, and expreſſed their general diſlike to all who ſupported the ſame principles. During the time they were at Quaker town, intimation was received that the marſhal had taken a number of perſons priſoners in conſequence of oppoſing the execution of this law, whereupon a determination was formed amongſt theſe people to go and effect their reſcue, and the people of Milford were generally invited to aſſiſt in this buſineſs. When they were going, the parted halted at the houſe of John Fries, and then a paper was ſigned, by which they bound themſelves volunteers to go upon the execution of this deſign, this paper was written by the priſoner at the bar, and ſigned by him and the reſt: therein they engaged to go and reſcue the priſoners who had been arreſted by the marſhal. On the morning of the next day 20 or more of them met at the houſe of Conrad Marks, in arms, to go on with their deſign. John Fries was armed with a ſword, and had a feather in his hat. On the road, as they went forward they were met by young Marks, who told them that they might as well turn about, for that the Northampton people were ſtrong enough to do the buſineſs without thoſe from Bucks county: ſome were ſo inclined to do, but at the inſtance of Fries and ſome others, they did go forward, and actually proceeded to Bethlehem. Before the arrival of theſe troops, a party, going on the ſame buſineſs, had ſtopped at the bridge, a ſmall diſtance from Bethlehem, when they had been met by a deputation from the marſhal, whom he had prevailed on to go and meet them, in order to adviſe them to return home: they agreed to halt there, and ſend three of their number to declare to the marſhal what was their demand: it was during this period that Fries and his party came up, but it appears that when they came, Fries took the party actually over the bridge and that he arranged the toll with the man, and ordered them to proceed. With reſpect to proof of the proceedings at Bethlehem, it cannot be miſtaken: he was there the leading man, and he appears to enjoy the command. With the conſent of his people he demanded the priſoners of the marſhal, and when that officer told him that he could not ſurrender them, except they were taken from him by force, and produced his warrant for taking them, the priſoner then harrangued his party out of the houſe, and explained to them the neceſſity of uſing force; and that you ſhould not miſtake his deſign, we will prove to you that he declared, "that was the third day which he had been out on this expedition, that he had had a ſkirmiſh the day before, and if the priſoners were not releaſed he ſhould have another that day. Now you ſee," reſumed he, "that force is neceſſary, but you muſt obey my orders, we will not go without taking the priſoners; but take my orders, you muſt

not fire firſt: muſt be firſt fired upon, and when I am gone, then you muſt do as well as you can, as I expect to be the firſt man that falls." He farther declared to the marſhal; that they "would fire till a cloud of ſmoak prevented them ſeeing one another; and executing the office of commander of the troops which at that time over awed the marſhal and his attendants, harrangued the troops to obey his orders, which they accordingly did, and the marſhal was really intimidated to liberate the priſoners; and then the object was accompliſhed, and the party diſperſed, amidſt the huzzas of the inſurgents. After this affair at Bethlehem, it will be given you in evidence that the priſoner frequently avowed his oppoſition to the laws, and juſtified that outrage; and when a meeting was afterwards held at lower Milford to chooſe aſſeſſors, the priſoner refuſed his aſſent to the accommodating object of the meeting, and appeared as violent as ever.

Theſe are ſome of the points we mean to prove before you. I ſhall therefore at preſent proceed to introduce our teſtimony.

William Henry, Eſquire, ſworn.

Council. Were you at Bethlehem on the 7th of March laſt?

Witness. I arrived there on the evening of the 6th—we had heard that there was a party of men would collect, for the purpoſe of reſcuing the priſoners who were there in cuſtody of the marſhal, in conſequence of that I went to aſſiſt the marſhal, and, if poſſible, prevail on the people to deſiſt.—The witneſs ſaid he was one of the judges of the court of common pleaſe for the county of Northampton.—About ten o'clock on the morning of the 7th two men with arms arrived at the tavern where we were, the name of one was Keifer, and the other Paulus: they were called into the houſe, and enquired of by the marſhal as to their intention in coming armed, they appeared to be diffident about an anſwer; after firſt ſaying they came upon a ſhooting frolic, Keifer ſaid they were come in order to ſee what was beſt to be done for the country: after that came in ſeveral others three of them were David Shaef, Jacob Kline, and Philip Teſch, armed and on horſe back, two of them in uniform, with ſwords and piſtols: the two firſt men were placed with the marſhal in a ſeparate room, in order to await the iſſue; at this time a conſiderable number of people had aſſembled. Henry Shankwyler was in company with the three men: the marſhal firſt went and ſpoke to theſe men as to their intention, I alſo walked out for the ſame purpoſe, requeſting them to withdraw, and not appear in arms in order to obſtruct the proceſs of the United States laws: Shaeff and Kline anſwered that they were freemen, and might go where they pleaſed with their arms: I told them that they ran great riſk by appearing in arms for ſuch a purpoſe as I feared they were come.

Council. Were theſe three, the whole of the armed men preſent?

There came in a number, but I don't know how many particularly, as they mixed among the croud.

We requeſted them to deliver up their arms, but they refuſed. I alſo, at the ſame time told Shankwyler that it would be beſt for him to ſurrender himſelf, and not oppoſe the proceſs, the others gave me anſwer, that they had come to accompany their friend Shankwyler, and to ſee that no injury was done to him. After this I returned into the lower back room of the houſe, by this time there were a number more collected round the houſe, but meſtly armed. I don't recollect whether it was before theſe

three men arrived or not, that the marſhal had ſent off four men of his poſſe, in order to meet the men with arms who were coming forward, and after we were up ſtairs there were three men arrived as a deputation from the armed body, making enquiry as to the intention of the marſhal in taking theſe priſoners: with theſe 3 men the 4 deputed by the marſhal had returned from the armed body that was the other ſide of the bridge, in order to learn the marſhal's object. The marſhal aſſured them of the legality of the proceſs, and reaſoned with them as to the conſequences of oppoſition, or threats to him, or preventing him from executing his duty, but I believe he liberated the two men that were firſt put in confinement, and returned them their guns again. During the time that theſe two men were in confinement we examined their guns, and found that they were both loaded. I was pretty much in the lower part of the houſe backwards, and there was much of the proceedings of theſe people I did not ſee, in the front of the houſe, but I endeavoured to converſe with as many as I knew, informing them of the badneſs of their conduct, and the conſequence of it, but it appeared to be to no effect, as I knew. About one o'clock I think I firſt ſaw what was called the main body of this armed force, marching up the ſtreet: there was a party of horſe preceded the foot came riding up two a breaſt, I am not certain whether they had their ſwords drawn, but I believe they had, and then followed the foot, marching up in Indian (ſingle) file, when they came up the foot marched twice round the tavern, and placed themſelves in front of the houſe, where they ſtood ſome time drawn up in ſingle rank, I believe they were rifle-men they continued there till the reſcue was effected. During this time I frequently heard that the priſoners were demanded by them, and they inſiſted on their releaſe.

Cross examination. Did you hear the demand made?

No, I did not, but I heard in the houſe that it had been made; I alſo heard that they intended to force their paſſage up ſtairs. I obſerved a party coming up ſtairs, particularly one, whom I did not know, pointing a rifle up the ſtairs, as though levelling it at ſome particular perſon. The people appeared very noiſy in the lower part of the houſe, all this time, I frequently heard the cry of "deliver up the priſoners," and it appeared to come from the party at the foot of the ſtairs. During the affair, I am not certain whether it was previous to this or not, I looked out and ſaw ſix or eight men at the foot of the ſtairs and the priſoner on the ſtairs converſing with the marſhal: while I was ſtanding there, there was an old man, whom I underſtood afterwards to be John Kline, came running in from the front door, and called for captain Fries in German, telling him there was his ſword; (offering it) I think he called three different times, on which I obſerved the priſoner wave his hand and tell him to wait, it was not quite time yet; ſhortly after the priſoners were given up. I was not by to be able to hear the converſation between the marſhal and the priſoner.

Attorney. Did Fries appear to take the command of the men?

I ſaw Fries going backward and forward among them as though he had; and I ſaw him marching into the town in front of the foot men.

Court. Did you ſee him acting, or buſying himſelf?

Yes, I saw him at different times passing to and fro.

Did any officer stay with the men that were drawn up in array before the house?

I noticed captain Stacler particularly, giving orders to his troop, and with his sword drawn.

Did you see any communication between Fries and Stacler?

Not that I recollect.

After the prisoners were delivered up, the principal part of the men marched off: I particularly heard captain Jarrett call to his men: I do not recollect hearing Fries.

Did they take the prisoners with them?

No. I heard two or three men in the back room say that they must see the prisoners, and insisted they should be let go before they would leave, and particularly they enquired for the minister, one Jacob Ireman, he was a prisoner, and at that time actually in custody.

COURT. What were these prisoners in custody for?

They were arrested for combinations and misdemeanours.

There was, among the company in the lower room, a man who declared himself very violently; he said if the damned stamplers* had only fired a shot, we would have shewed what we could do. He was one of Stacler's company. He really expressed a wish that it had been done. The words were spoken in German.

ATTORNEY. Were many, or any of these people in a military dress as well as arms?

There was twelve or fourteen of the horse: I believe there were none of the foot, except that about ten or twelve had cockades of blue and white, blue and red, &c.

COURT. Had they cartouch boxes, or any other means of carrying ammunition?

They had shot pouches, particularly the rifle company, and I believe all who had guns. Keefer, who was first disarmed had a powder horn in his pocket: his piece was a common fowling piece, the others were mostly rifles, as far as I could perceive from the window.

How many armed men were there?

I did not count them, but there appeared about an hundred, or rather above that number. The whole croud assembled I think could not have been less than 400.

What number of persons had the marshal with him for his posse commitatus to arrest these people?

I think fourteen or fifteen.

How many prisoners do you think there were?

I believe eighteen or nineteen.

Cross examination. Did you ever gather more than you have now stated, of the intention of these people in assembling there?

I have frequently heard that they meant to oppose the laws.

What was the object declared by the people themselves at that time?

* *A* STAMPLER *was explained to be a nick-name given in that country to the friends of government, originating from their support of the stamp act.*

I underſtood that releaſing the priſoners was the object they had in view, both from themſelves and from ſeveral perſons with whom they had converſed on the ſubject.

Was there a proceſs againſt theſe perſons who arrived, and were detained by the marſhal?

No.

COURT. Did you ſuppoſe, from the converſation you heard, that it was theſe two priſoners who were intended to be releaſed, or the priſoners held in cuſtody by the marſhal againſt whom proceſs was iſſued?

I ſuppoſed thoſe priſoners who were taken by warrant by the marſhal. I ſuſpected that the two perſons who firſt came, came with improper views, and as ſuch ought to be confined, and wiſhed them to be kept till we ſaw thoſe perſons who were coming with arms.

What did the deputation from thoſe armed men demand?

They demanded the releaſe of thoſe two men, and they were releaſed previous to the coming up of the armed men.

Croſs examination. At the time that Fries was converſing with the marſhal, although you had not an opportunity of hearing what paſſed, was there any violence in his manner, or any appearance of rage in him?

As to his own particular conduct, I cannot ſay, for it was but a few moments that I had time to notice him: I ſaw no particular violence in his manner.

Did you hear Fries communicate to the croud the queſtion he propoſed to the marſhal, and the marſhal's anſwer reſpecting theſe priſoners?

No I did not; this I heard in the general converſation.

You never ſaw Mr. Fries but at the time he was converſing with the marſhal, and at that time not with any violent appearance.

I ſaw him both before and after, paſſing to and fro, but did not know the marſhal's name, but ſeeing a feather in his hat, I ſuppoſed him to be a man of conſequence.

At the time this ſword was offered to Fries, he did not take, nor did appear to have any arms about him?

No.

Was there any thing ſaid, during this tranſaction about bailing theſe priſoners?

There was a demand made by Shankweyler, in the room of the lower part of the houſe, a ſhort time previous to the actual releaſe, but the marſhal told Shankweyler that his command was to take him before the judge, and he could not admit him to bail.

Was there, or not, a general overture made to bail theſe priſoners?

Not that I recollect: there was much converſation on this ſubject in different parts of the houſe, but not as coming from the party; but I believe it was obſerved that if they could be bailed, it was probable the party might be influenced to withdraw, but this did not come from the party themſelves.

You mention that there were upwards of an hundred men in arms, and that the aggregate preſent was about 400. do you conſider every individual who was there as partaking of this riot?

No. Though there were many of them that appeared there unarmed, were very violent in their expreſſions, and generally they were in oppoſition to the government.

During this period, were there any commiſſioners, or aſſeſſors there?

There was Mr. Eyerly, commiſſioner for that diſtrict, Mr. Balliott, and the principal aſſeſſor, and I believe two other aſſeſſors, if not more.

Were any acts of violence offered to theſe officers during that time?

Not that I ſaw.

Did theſe officers remain in the houſe, or go down among the people?

They remained in the houſe I believe: they arrived there on Wednesday, the evening preceding.

Did they hear that there was a probability of the priſoners being reſcued?

Yes.

Did thoſe people declare that they would not leave the place till they had ſeen the priſoners at liberty?

Yes.

What became of the priſoners?

I believe the moſt part of them left the houſe in a ſhort time after. I underſtood they were, generally, not deſirous of being reſcued. They expreſſed themſelves ſo in my preſence, and when they were delivered up, they entered into ſome kind of obligation to deliver themſelves up in Philadelphia.

COURT. Did theſe priſoners or the greateſt part of them appear any way deſirous of being releaſed?

No, they did not: on the reverſe, they were very apprehenſive of the conſequences of getting into the mob.

Theſe priſoners were many of them from your county, and you were pretty generally acquainted with them, did it appear that the priſoners were acquainted with thoſe who came to reſcue them?

The greater part of them were not, eſpecially thoſe who came from Lehi townſhip. Twelve or thirteen of them I knew.

ATTORNEY. How far did the parſon live from Bucks county?

Forty miles, I ſuppoſe.

COURT. Did thoſe perſons who came armed, profeſs to be particular friends to any of them?

Not that I heard or knew of.

WILLIAM BARNETT, ſworn.

Were you at Bethlehem on the 7th of March, and if you were, relate the circumſtance that tranſpired.

I was ſummoned to attend the marſhal on the ſeventh of March at Bethlehem, as one of his poſſe. I came there about 11 o'clock in the forenoon: I was there but a very little time, when I underſtood there were ſome men coming with arms: the marſhal then appointed four of us to go out to meet them, in order to prevail upon them not to come into the town. We went on about a mile from Bethlehem, and croſſed the Lehi, and there we met a party of horſemen firſt: they were armed. I did not know any of them, but underſtood they were from Northampton county, near about Millar's town. When we came up to them, we aſked

them for their commanding officer. They made anſwer that they had no officers; they were all commanders. We then told them what our errand was—to try to prevail upon them not to go on any farther, but they did not ſeem to mind it much. We were with them but a very little time, before there was a company of rifle men came up, they were armed as well as the others. We told them our errand, but they did not ſeem to mind us. We then returned, and came on with them to the bridge of the Lehi, where we halted. There we talked with them a great while, but ſtill they wanted to go on. We told them we came from the marſhal, and aſked them what they wanted by going into Bethlehem with their arms. They ſaid the marſhal had two of their men that had come to Bethlehem under arms, and had put them under guard, and they wanted them, and they would have them two men ſet at liberty, and one of the name of Shankwyler. As I found that they were determined to go, I aſked if they would not allow that if any one had done wrong, they ought to ſuffer for it: They agreed that they ought, but they ſhould not be taken to Philadelphia, but have been tried in Northampton county. When we found that they were determined to go on, we agreed that they had better ſend two or three men over to the marſhal, and not to go bodily. Which they agreed to, and appointed three men to go, and they ſent them over.

Attorney. Was there not ſome ſtipulation that you ſhould return the men ſafe.

Yes there was; they were afraid theſe three men would be confined alſo; but we promiſed them that we would ſee them ſafely returned. We then all went over together to the tavern at Bethlehem, where the marſhal was. They ſpoke to him, told him what their buſineſs was, and he gave the two men up to them. When they were given up, we went back with them, in order to go to where we had left the remainder of the men. Going down through Bethlehem, we met a party of horſemen, and we ſtopped them: they were armed; part of them were light horſemen; and part were other horſemen: they all had ſwords or ſome arms or other. The light horſe had their ſwords drawn. We told them that they had better go back, and not go up into the town, but they ſeemed very anxious to go up. One of them made anſwer ſomething like this: "This is the third day that I was out, I had a fight yeſterday, and I mean to have another to-day if they do not let the priſoners clear.

Jury. What priſoners did you underſtand him to mean, the two men?

He did not ſay any more than the priſoners.

Attorney. Who was the man that ſaid ſo?

To the beſt of my knowledge the priſoner was the man: I never ſaw the man before, but I took notice of him then.

Had he any arms?

He had a ſword. This was a diſtinct body from thoſe we had left at the bridge; theſe were others who had come up during the time we were gone.

Court. John Fries had not come up when you left them, had he?

I do not know that he was there at that time; the firſt time I ſaw him, was as I came back.

ATTORNEY. Had the two men whom the marſhal gave up proceeded down the ſtreet, towards the party, and met with them at that time?

I did not take notice where they went to after they were releaſed; they went on up town.—When I ſaw the riflemen coming forward, I ſtopped till they came up, and then ſpoke to them: they ſeemed that they would go on, but they promiſed that they would do nothing.

Did you let them know that the two perſons whom they had demanded were liberated?

Yes, I did, and the three men who went with us told them alſo.—The horſemen did not wait one moment, but hurried on: they all then marched up town, and formed right in front of the tavern: I returned with them. After they were formed there, I was among them, and talked with them a great deal, but could not do any thing with them: if there was ten or twelve that agreed to be moderate the others would all inſiſt upon it, that they would have the priſoners, all of them. We were there for nearly or quite two hours. This man, whom they called captain Fries, came out and mentioned to his men that he would now have the priſoners, if any of them would go into the houſe with him: he had been in backward and forward ſeveral times. He ſaid he ſhould go foremoſt. He told them that he would aſk the favour of them, that they were, none of them to fire firſt, if they went in. He mentioned to them likewiſe, that there were ſome armed men on the ſtairs belonging to the marſhal. I did not expect he would go in: I was talking to ſome men there, when I looked round and ſaw ſome of the men at the door: he ſaid he would go foremoſt: he ſignified, talking in German, that he ſhould get a blow or a ſtroke: the neareſt tranſlation was, "I ſhall get it."—I looking round, ſaw the men going in at the door, and I followed them in: they were armed men. I did not ſee the priſoner after he had mentioned them words. I got in, between the men and the ſtairs at the foot of the ſtairs: they halted there, I got in there, in order to keep them back from going up ſtairs; I was there but a few minutes, when I ſaw the priſoners coming down ſtairs.

ATTORNEY. Did you notice any particular circumſtances that took place at this time?

WITNESS. They were determined to go on; a little fellow among them, I do not know who he was, ſeemed to be very angry.

Were they at that moment aſking for the priſoners?

Yes, they ſaid they would have the priſoners.

What was the conduct or expreſſions of the marſhal at that time?

I do not know, I was not ſo near as to hear any thing: after the priſoners were ſet at liberty, they were all gone in a few minutes; they ſeemed to be much pleaſed that they had them.

Repeat particularly what captain Fries ſaid, when he told the men to come forward.

He ſaid if he did get in, they ſhould not be ſcared, they then muſt do as well as they could: he ſaid he expected to get ſome ſtroke; he told them they muſt take care of themſelves: I do not recollect that he ſaid they ſhould ſhoot, yet I recollect ſomething he ſaid; I think it was "may ſtrike or do as well as you can." The priſoner at the bar went before, and he rather wiſhed the men to follow him.

On being questioned again as to the words used by the prisoner: the witness repeated it in German, which was translated in the court to mean that he expected to get it, and if he did, they must strike, and stab, and do as well as they could. *Seh'aget, steehet und mackt so gut als ihr konnet.*

Cross examination. I understand you to state, that when you went out at the request of the marshal, it was to speak to these people, and that they told you their object was to obtain the liberation of the two men belonging to their party.

WITNESS. Yes.

Do you not recollect any thing said about giving bail for the appearance of these prisoners?

No, I do not.

As soon as these prisoners were released did the croud begin or disperse?

Yes, immediately.

Then they did not attempt to attack, or use with violence any person with a view to liberate these prisoners?

No, not that I saw.

They did not seem to have any other object in view than to get the prisoners at liberty?

No, getting the prisoners at liberty was all.

COURT. Did none of them say any thing about the tax law?

WITNESS. I did not hear them say any thing.

What became of the prisoners after they were liberated?

I believe they all went to their homes.

Did you observe no violence whatever?

No, I did not either by violence or by words hear the prisoner, nor any other person attempt at any thing, more than what I have said.

JOHN BARNETT, sworn.

ATTORNEY. Relate to the court what occurred on the 7th of March at Bethlehem.

WITNESS. On the 7th of March in the morning early, just as I got up, the deputy marshal handed me a summons, at which I was a little flustered till I read it over. The summons was, that I should be at Bethlehem at 10 o'clock, to aid and assist the marshal in executing the laws of the United States. He also sent me some blank summons, desiring me to summon as many more as I pleased. I put Christian Winters, and John Mohollan's names down; we could not find any more good persons for that business. About 10 o'clock I arrived at Bethlehem. I was there but a very short time, when somebody came in, and said he had met 20 men at one place, 10 at another, &c. walking towards a tavern, on the road, about 3 or 4 miles from Bethlehem; I cannot recollect its name. The marshal, Mr. Irely, Mr. Henry, Mr. Balliott and others agreed that they thought it would be best to send three or four men to meet them, and to stop them on the road: it was then to be decided who should go. I mentioned that I thought John Mohollan and William Barnett could do more with them, than any body else. They were agreed upon as was Christian Roth (or Rote) and another, but Isaac Hatsel went in his place. This was, conformable to agreement, two federalists and two anti-federalists. They went and met them, I remained at the house. They were

not gone very long, indeed I think it was juſt as they were getting upon their horſes, there was two men, arrayed, and with arms ; one had a rifle, and the other a ſmooth bore piece. When they were come into the yard, the marſhal went down into the yard to them, and talked to them ; what he talked to them, I did not hear. However he took their arms away from them, and carried them up ſtairs, and put them by themſelves. Directly after that, there was five or ſix horſemen came, I was informed that there was one man of them named Shankwyler. The marſhal and judge Henry went down to meet them, they aſked them what they came there for : they ſaid, they only came there to be Shankwyler's bail : and judge Henry then aſked them what they did with their arms ? They ſaid they did not mean any harm with them. They then got off their horſes, and went into a room with the judge and the marſhal : what they ſaid there, I do not know, for I did not hear them. Preſently after there came up a troop of horſe, and behind them there was two companies of riflemen. They marched up right into the yard and formed before the door of the tavern.

How many riflemen do you ſuppoſe there was ?

About 50.

Had the light horſe their ſwords drawn ?

Yes.

How many do you ſuppoſe there were in the whole ?

On a rough calculation I ſuppoſe 130 or 140 armed men.

How many was there of the marſhal's poſſe ?

About 16 or 17.

After they had formed a line in the yard, about 15 or 20 minutes Captain Jarret arrived, when they gave three huzzas. He then went into the houſe and talked with the Marſhal : the Marſhal requeſted him to get the men to withdraw. He profeſſed he would. He had arrived from Philadelphia, whither he had been to give bail. After this, Jarrett ſtaid at the tavern about two hours. The men kept regular order, and never ſeparated. The Marſhal appointed four of us, me and three others to keep the guard of the ſtairs, armed with piſtols, two at the bottom, and two at the head. I ſerved my time, and the ſecond time I was ordered on guard by Capt. Henry Snyder, I ſtaid on the platform at the turn of the ſtairs, when Fries, the priſoner, came up to me, and wanted to go up ſtairs. I told him that he could not be permitted to go up ſtairs without the Marſhal's leave. I then aſked him what he wanted ? He anſwered that he wanted to ſee the Marſhal. I told him that I expected he could ſee him, and told ſome men at the head of the ſtairs to call the Marſhal out of the room. He came out, and I then told him theſe two gentlemen wanted to talk to him. He ſaid I ſhould let them paſs. As Fries was the firſt man, I let him paſs on between me and the other guard. The other man wanted to go up, but I told him that one at a time was enough, and that when the other had done, he would be permitted to talk to him too. Fries then went up and told the Marſhal what he came for : he replied that he was come for the releaſe of the priſoners. I ſtood cloſe by them when they were talking. The Marſhal made anſwer that he could not give them up to him ; he then told the Marſhal that he would

have them. Well then, ſaid the Marſhal, you muſt get them as well as you can; for he ſaid it was out of his power to deliver them up; he dared not to do it. Fries then told the Marſhal that he had a ſkirmiſh yeſterday, and he expected to have another one to day; he then ſaid to the Marſhal, "As for you Marſhal, I will vouch that none of my men will hurt you, but as for the other company I will not vouch for.

Do you know what he meant by the other company?

No.

Where was Mr. Balliott and Mr. Irely at this time?

They were in the room where they commonly were, up ſtairs.

What anſwer did the Marſhal make to that?

I do not know.

With that both of them marched off. I remained on guard. A little while after this, I ſaw the men coming in at the door, and they got into the entry, with arms. I did not know one of thoſe who came in except Fries: he returned with thoſe armed men. He had a ſword in his hand, but I think it was in its ſcabbard. When they got into the entry, they were preſſed upon by the poſſe, who ſoon got them clean out of the door. I then got off guard. The language of the men was, that they would have the priſoners. I could not hear many of their expreſſions, becauſe I was chiefly up ſtairs, but I heard them ſay they would not leave the ground till they had the priſoners. The marſhal at this time had gone back into the room. Before the priſoners were releaſed I was relieved. When they made the ſecond attempt, I was up ſtairs, looking out of the window. I believe Chriſtian Winters took my poſt. Theſe priſoners were at this time up ſtairs in a room by themſelves.

How many priſoners were there?

About ſixteen or eighteen.

Where was Shankwyler at this time?

He was down ſtairs in the back room, he was not taken up ſtairs at all.

Do you know any of the other priſoners?

No.

COURT. Did there appear to be any kind of acquaintance, or friendſhip between Fries and any of the priſoners?

No, I believe there was not.

Did they appear to wiſh to be reſcued?

No, the priſoners ſaid they did not wiſh to be reſcued by thoſe people, they ſaid that they knew none of thoſe people that were before the door. If they had done any thing wrong, they ſaid they were willing to go any where to take their trials. The miniſter, and the Lehi people were all there.

Croſs examination. Was there any violence offered?

WITNESS. I ſaw them point their guns toward the window often enough.

Was any violence offered to any perſon, beſides what was offered to the marſhal?

No.

Did you hear theſe men ſay that they came there for any other purpoſe than to reſcue the priſoners?

No, I did not, and I believe that was all.

COUNSEL. No violence of manner or expreſſion was uſed while Fries was talking to the marſhal, was there?

WITNESS. No, he had his ſword in his hand, and in its ſcabbard at that time, and the other man had his ſword, and a regimental coat on.

During the time that you were there, did any perſon offer Fries his ſword?

Not that I know, I did not hear any perſon.

You did not hear any one cry out, here Mr. Fries, here is your ſword?

No, I do not recollect it.

CHRISTIAN WINTERS, ſworn.

I was ſummoned on the 7th of March to go up to Bethlehem, and I went accordingly: when I came there, which was about 11 or 12 o'clock —about the middle of the day, the firſt man that I ſaw come there armed was one Keifer: another, I think his name was Paul, came with him to the tavern: the marſhal went out, and brought them into the houſe, and took them up ſtairs: I was on guard at that time, and with another, I was ſet to ſtand guard by them. As we were in the room together, I aſked them one thing or another, and amongſt the reſt, what they came there for. Keifer told me that he heard they had to meet there to-day, and that they had to decide about the laws; or to ſee how it was made out about the laws; I then aſked him what made him carry a gun with him; why, he told me, ever ſince he had been a little boy, he was fond of ſhooting, and therefore, whenever he went out on a frolic, he liked to take his gun along, for he liked to hear it crack once in a while. I told him that he really put himſelf in a great deal of trouble, he told me that he meant no harm by it; that he thought he could carry his gun when he pleaſed. After I was relieved from my poſt, I went to the back door, and ſaw ſeveral people who ſaid that they would not wiſh to be taken to Philadelphia, they would be tried in their own county: they were not in arms. I then went up ſtairs where the priſoners were; I went into the front room where Mr. Eyerly, Mr. Henry and more were; I was then put to the top of the ſtairs, and got orders that I ſhould not let any body up or down without their orders. I had a piſtol with me. Nothing happened while I ſtaid there, but after I was relieved, I ſaw Mr. Fries ſtanding on the platform of the ſtairs, talking to the marſhal. I could not then hear all that paſſed, but what I heard him ſay was "I have been out, either two or three days on this buſineſs, and I had a ſkirmiſh yeſterday, and I expect I will have another to-day." He ſaid that if the marſhal did not give up the priſoners he would have one to-day. This was ſomething like his words, though I ſtood at a little diſtance. I heard the marſhal ſay he could not give them up. This was his meaning, but there were ſo many words I could not make out.

COUNCIL. Had Fries a ſword with him?

I did not take notice. There was nobody that I could ſee with the marſhal but Fries. Afterwards he went down the ſtairs, and I then went down ſtairs, and went out of the front door. After that I ſaw a company come in with arms; I did not ſee Fries come in with them. I aſked what they were after; I could not make out who it was, but ſomebody ſaid, we will obey our captain's orders. I then went back, and went to the platform of the ſtairs, one of the guard aſked what was the matter? I told him there was danger coming on. He then handed me his piſtol, and another man handed me another piſtol, and I ſtaid on the platform in the front. At this time there was judge Mohollan, and I

think major Barnett, and ſome others. At the ſame time there were ſeveral under the ſtairs. I told them to ſtand back, they were doing wrong if they did not I muſt do a thing I ſhould be ſorry for. I kept my thumb to the piſtol all the time: they then ſtepped back, and had ſome talk, but I could not make out their expreſſions. They then went out of the door again, and the priſoners came down. The marſhal came on to the platform, and I left my place. The marſhal ſent me down to learn the name of a perſon.

COURT. Had you any converſation with the people out of doors?

WITNESS. I had a good deal, and told the conſequences of their conduct. They ſaid that they were all againſt the priſoners coming down to this place, they ſhould be tried in their own county. I did not hear any thing about the laws, they merely complained about the priſoners being taken down to Philadelphia, and nothing about the laws at all.

ATTORNEY. Had you not a diſpute with one of them?

WITNESS. Yes, I was ſent down by the marſhal to enquire a man's name; he wanted to know what I aſked him for; he ſeemed to be ſcared: he ſaid he did not mean to do any harm to any one. I do not know his name. When I ſpoke to this young man, one came up and ſaid don't tell this damned Stampler. The meaning of this word I think is about this ſtamp act; they called theſe people Stamplers that told them the conſequences of this conduct. It is thought a term of reproach. The man who called me ſtampler ſtruck at me, but did not hit me; they told me his name was Henney.

Croſs examination. The people daparted as ſoon as the priſoners were releaſed, did they not?

WITNESS. Yes.

Did you uſe no ill language to the man who ſtruck at you?

I called him a raſcal, or ſomething that way.

CHRISTIAN ROTHS, ſworn.

On the 7th of March, I was ſummoned to go to Bethlehem, but did not know what it was for. About 11 o'clock I got to Bethlehem, when I came, Mr. Eyerly came to me, and told me ſome men were coming there to reſcue the priſoners, I thought it not poſſible, but he told me it was certain. When we had been there about three hours, there came two men on horſeback, and had their arms, whereupon Mr. Marſhal, myſelf and Mr. Philip Sheitz went down and aſked them what they were about. They told us they were informed that there were a number of men met there to-day, ſo they ſaid they came there to ſee how they came on: they did not ſay what they heard they were to meet for. We took them and put them into the houſe under guard, and took their arms from them. I then thought there was ſomething in what Mr. Eyerly had mentioned to me. I then made an obſervation to Mr. Eyerly if he did not think it proper that one or two men ſhould go and prevent theſe people coming. Mr. Eyerly told the marſhal of it, and he thought it would be proper, there ſhould be ſome men go. I agreed that if no one elſe would go, I would go by myſelf. I do not know who ſpoke to the others; but I, judge Mohollan, major Barnett, and ————, went out. We met them within a mile of Bethlehem. I did not know a ſingle man of them, but judge Mohollan and major Barnett ſpoke to them firſt, but I did not underſtand what they ſaid. I went farther back, to the rear: I ſaid to

them what in the world are you about men; you will bring yourſelves into great trouble. One of them mentioned, we don't know you: I mentioned if you know me or not, you will thank me for it. I ſaid, if you do not do as I adviſe you, you will be ſorry for twenty years after this; ſo there was one of them that levelled his gun at me: ſaid I, little man, conſider what you are about, don't be too much in a hurry: then ſome of his comrades puſhed him back. Then that man hallowed out, march on, don't mind this people: I do not know his name.' They then marched on to the bridge, and there we ſtopped them again. They then agreed amongſt themſelves that they would ſend three men with us to the marſhal, to ſee if they could get the two priſoners we took at firſt, liberated, and gave their honour that none of them ſhould come over the bridge with arms. We then went with theſe three men to the tavern, at Bethlehem. They then went to the marſhal and agreed with him, and the two priſoners were diſcharged, but he ſat down their names. I do not recollect their names. When theſe two men were diſcharged, we went to go back with them again, but when we came to the lower end of Bethlehem, there was that company and another coming on, and there was no ſtopping them again.

Attorney. Did they know theſe men were diſcharged before they paſſed the bridge?

Witness. I do not know.

How far is the bridge from Bethlehem?

About half a mile.

Do you know which way theſe two men went?

They went with us I think, but I am not ſure. I endeavoured to ſtop them to reaſon with them, but they would not, and I then told them if they were determined not to hear, they might do as they pleaſed.

Did you ſee the priſoners, in this company?

No, I did not ſee this man at all to my knowledge.

As I came back to Bethlehem, I went up ſtairs to Mr. Eyerly and the marſhal. The men paraded before the tavern, and there I think they were for two hours.

How many do you ſuppoſe there were in arms.

I ſuppoſe 120 men or upwards, were drawn up.

Did you ſee thoſe two men that were firſt kept priſoners?

Yes, I ſaw them mix along with theſe people.

Were the light horſe armed?

Yes, ſome of them, and with there uniforms.

Had they their ſwords drawn?

No, not till they came near to the tavern, then they drew their ſwords, a great number of them. Before we ſtarted from the bridge, we aſked them again what they were about? they told us that they were informed that they had taken a number of priſoners, and that they would take them to Philadelphia, and put them in gaol there, and no bail would be taken for them: we aſked them what priſoners it was they meant? they mentioned one name only that I recollect, which was one Shankwyler. They mentioned that they would not ſuffer Shankwyler to be put to gaol in Philadelphia: they mentioned that they would give bail ten double for him, or that they might put him in gaol in our own county, and try him in our own county. I ſaw one Schwartz come up into the room where the marſhal was.

COURT. Was not you among them after they came to Bethlehem ?

No, I was not. Old Schwartz ſaid he had two ſons in the company, and they were two of the prettieſt boys in the company.

Did you ſee any of the people in the yard levelling their guns at the window ?

No.

Cross examination. Was there any other of this company beſides Schwartz that came up into the room ?

No.

Did any one abuſe, threaten or inſult Mr. Eyerly.

Not that I know of. I heard no threats againſt any one.

COLONEL NICHOLS, the Marſhal, ſworn.

ATTORNEY. Mr. Nichols, pleaſe to relate the tranſactions which led to the ſubject of the indictment againſt the priſoner, and the affair at Bethlehem.

WITNESS. Some time between the 20th and 26th of February the warrants I now hold in my hand were given to me by the attorney of the diſtrict, with orders for me to go to Northampton county to execute them. I ſat out on the 26th and after ſerving ſome ſubpœneas on the road, in order to get ſome evidence about ſome matters that were wanted to be in poſſeſſion, I got to Nazareth on the firſt of March, next morning, Mr. Eyerman and myſelf went into Lehi townſhip to ſerve ſome warrants upon ſome perſons who had given their oppoſition to the houſe tax law. I think we got twelve of them that day, the others were not to be found. I think there were five of them, however they came in afterwards. We then returned to Bethlehem, and there met with Col. Balliott. We went then to Macungy townſhip, and there we met with no difficulty till we went to the houſe of George Syder; I had a ſubpœne on him: he and his wife inſulted us very much; his wife began abuſing us firſt, and he came out with a club, and would by no means be purſuaded to receive it I ſuppoſe not underſtanding it: I gave it to a Mr. Schwartz, a neighbour, who undertook to deliver it to him. We then proceeded to Millar's town, a few miles farther: on the way we ſtopped at the houſe of the Rev. Mr. Buſkirk, where we left our horſes, and walked into the town, to the houſe of George Shaeffer, to ſerve a warrant on him; but were informed that he was not in town. We returned to the tavern, about the centre of the town, and there we ſaw a conſiderable number of people aſſembled. Mr. Eyerly and myſelf walked over to Shankwyler. As we walked out, many people ran after us, and many ran paſt us, and getting into the houſe, filled the long room. There appeared to be about fifty men. Near the houſe in which Shankwyler lived, we concluded it was bad policy to aſk for him, for by that means it was not likely we ſhould find him. And therefore as colonel Balliott knew him, I got him to point him out to me; but upon obſerving me, he withdrew into the croud, I followed him, and laid hold on him, and told him he was my priſoner in the name of the United States. I told him I was the marſhal of the United States for the Pennſylvania diſtrict. He retreated towards his barn. He afterwards called out that he would not hurt the marſhal, but Eyerly and Balliott were damned raſcals: after this the people called out to each other *Schlaget, Schlaget:* (ſtrike, ſtrike) This ſeemed to be the general voice of the people. There was one of the Shaeffer's ſeemed to be a prominent character; it was David.

I told them the conſequence of their attempting to ſtrike: I had a pair of piſtols, and finding the danger we were in, I pulled open the buttons of my great coat, that I might, if neceſſary, get a ready gripe at them: whether they ſaw them or not, I cannot ſay, but when they found that I was determined not to ſuffer theſe people to be abuſed, they were then a little quiet: they, however, pulled the cockade out of Mr. Balliott's hat, and I believe would have done more violence to him, had they dared. I called on Shankwyler to go with me to Bethlehem, and thence to Philadelphia, but he ſwore he would not: I told him the conſequence of reſiſting the authority of the United States, that it would be ruin to him; he declared and ſwore he would reſiſt; he would not ſubmit, be the conſequence what it might. I told him it would ruin his intereſt and family; he ſaid he would do it, if it was to the deſtruction of his property, and children. However, he finally agreed to meet me at Bethlehem, but never promiſed to ſubmit, or ſurrender himſelf as priſoner. He ſpoke a good deal about the ſtamp act, and the houſe tax; that ſeemed to be the bone of contention, and he ſaid he had fought againſt it, and would not ſubmit to it now; I told him he appeared to be too young to have fought on either ſide during the war: he then ſaid, his father had, he then added that there were none in favour of thoſe laws but tories, and officers of government. I told him that, as to tory, that could not apply to me, that I had had a ſhare in the revolution, and that I was as fond of liberty as any of them. We came away, and as we came out, Mr. Eyerly and Mr. Balliott came out of the door, they huzzaed for liberty: I told them that I ſhould join them in that, if they would huzza for liberty of the right kind; but this was licentious liberty. We then went with a conſtable to arreſt Adam Stepham, Herman Hartman, and Daniel Everly. When I returned, I was informed that the reſcue of the priſoners at Bethlehem was intended. This was on the ſixth of March. I could ſcarcely conceive it poſſible; I thought it was ſomebody for their own diverſion had raiſed it merely to alarm us, until we got to Bethlehem, where we got that night. There we were informed that the report was ſerious, and that it would be attempted by a body of armed men. On which I conſulted with judge Henry, Mr. Balliott, Mr. Eyerly, Mr. Horſefield, and general Brown. I had taken a bond of the Lehi people, with ſureties for their appearance. I ſent Mr. Weed over the mountain to arreſt Ireman, the miniſter, and John Fox, which he did. Seeing this matter very ſerious and important, I requeſted general Brown to remain at Bethlehem, as he had very great influence in that county: he ſaid he was ſo near home, that he ſhould go home, as he had been ſo long from his family. I then aſked him to return in the morning, but he ſeemed to think there was no neceſſity for it, and did not. I then conſulted what ſteps it would be neceſſary to take; I had ſeen an attorney, and told him I was ordered to call a *poſſe commitatus* in caſe of neceſſity, and alſo that I was ordered that they ſhould not be an armed force; I then ſpoke to judge Henry, expecting that he could call out armed men, but he told me he could not, for he had received ſimilar inſtructions. We then concluded to call about 20 men. He called this poſſe from the neighbourhood of Bethlehem and Eaſton, about 18 of them came in. About 10 or 11 o'clock two men riding into the yard, diſmounted, and placed themſelves oppoſite the door, by the ſide of each other; one of them had a long ſmooth bore gun, and

the other a rifle. Some people in the houſe went out to ſpeak to them, and aſked them what brought them there: they ſeemed to be at a loſs for an anſwer; I think one of them ſaid they came out on a ſhooting frolic: I then aſked them what they meant to ſhoot: they did not know, nor could they explain the object of their coming. I aſked them what they meant to do: one of them ſaid they meant to do what was beſt for the country. I then ſuppoſed that they would all come in by ſtraggling parties, and therefore thought it was the beſt way of making the buſineſs eaſy, was to lead them into the houſe, which I did, and put their arms into the garrett. Shortly after, three horſemen, armed, and, I think, in uniform came into the yard with Shankwyler: I went and ſpoke to them, and ſome went with me. I aſked Shankwyler if he was come to deliver himſelf up; he anſwered no. I aſked him what he came for, if he did not come to ſurrender himſelf, he anſwered that he came to ſee his partner: on farther enquiry I found he meant his accuſer. By this time the people were collecting very faſt, and ſome perſons mentioned that there was an armed force down by the bridge. On conſulting with the gentlemen who were with me, it was agreed that a few men ſhould be ſent to ſpeak to them, and warn them of the danger they were in if they perſiſted in the meaſure which we ſuppoſed they intended. It was accordingly agreed that four gentlemen ſhould go, which they did, and in a little time returned with three of their force, as a deputation from them to ſpeak to me. I aſked them what was meant by this armed force, and and what they intended by it: they anſwered me that they wanted to prevent my taking the priſoners to Philadelphia. I told them that could not be, nor muſt be; nor muſt it be attempted, they had much better go back, and tell the people to go to their reſpective homes. I think they aſked me, particularly for the two men who had firſt been made priſoners; I forget whether I gave them up then, or ſome ſhort time after; however, they were given up, and their guns were given up to them: they were both loaded, and one of them was putting a new flint into his gun, in the yard, before I went out to ſpeak to them. The ſame gentlemen who went down to ſpeak to them at the bridge, went down to them again, and, a ſhort time afterward, we obſerved that they were coming up in force, up the ſtreet, Mr. Muhollan riding with the foremoſt of them, and ſpeaking to them: the horſemen, ſuch as had ſwords, had them drawn: the infantry marched with trailed arms. The priſoner at the bar was at the head of the infantry, with his ſword drawn: the horſe marched into the yard, and formed in front of the houſe, the infantry marched round the houſe, and the captain, with the leading file, came in at the upper gate. I had a great deal of converſation with different perſons among them, who ſeemed to take a lead. They were all ſtrangers to me, I told them the conſequences of their attempting to reſcue the priſoners; I told them they might reſt aſſured that things of this kind would be ſeverely puniſhed by the government; that it would be conſidered an high offence, and that every inſult offered to me, would be an inſult to the United States. I had a good deal of converſation with the priſoner at the bar, without knowing that he was captain Fries, till he made himſelf known to me. I remonſtrated ſtrongly againſt the meaſures, and told them the conſequence, but they ſeemed regardleſs of it, and ſeemed determined that I ſhould give them up.

Attorney. Did they ſpeak of any priſoners in particular?

Witness. No, they ſpoke generally of the priſoners.

Did the priſoners ſpeak of them as particular friends neighbours, or acquaintances?

No, the meaſure was his object. During this converſation, he was without his ſword. The ſubſtance of the converſation was, he demanded of me the priſoners; I refuſed to give them up, and told him the conſequences of his demands. On his ſtill inſiſting, I told him that he and thoſe about him would be ſeverely puniſhed for this conduct, that he would ſurely be hanged. He ſaid they could not be puniſhed: he ſaid ſomething to the effect that the government were not ſtrong enough to hang him, for that if the troops were brought out, they would join him.

Attorney. Did he give any reaſon for wiſhing to reſcue thoſe priſoners?

His reaſon was, that he was oppoſed to thoſe laws: the Alien law, the ſtamp act, and the houſe tax law, and ſaid they were unconſtitutional. He alſo ſpoke of bringing people charged with crimes to Philadelphia to be tried as an oppreſſive thing: they had no objection, he ſaid, to be tried in their own courts, and by their own people. We parted, and met in the croud two or three times, for the houſe was much crouded: he ſtill demanded of me the priſoners, I told him I could not give them up: I told him I was commanded to bring them to Philadelphia: he inſiſted upon having them, and I that he ſhould not. He then went and talked to his people, and came to me again. He told me that if I did not give them up, he would not anſwer for the conſequences: he told me that he would not hurt me: he was the oldeſt captain in the rank, but he would not anſwer for them that were with me: that he took command of the whole by rank. By this time captain Jarrett came in, and by this time there was much noiſe and huzzaing. I was told that this noiſe was on account of the arrival of captain Jarrett: I wiſhed him pointed out to me in confidence, that, as he had come to ſubmit to the laws, he would be able to perſuade others to do the ſame. He was to me; he had a pair of piſtols in his hand. He ſhewed me that he had entered into recognizance for his appearance. I then begged him to uſe his influence in perſuading the people to diſperſe, and go to their reſpective homes, and told him what would be the conſequence if they did not. His anſwer was, that he had no influence; that he could do nothing. After this, I conſulted with judge Henry and others, what was beſt to be done; it ſeemed to be their opinion that I had better ſubmit, and give up the priſoners: I told them I would not do it, I would immediately march the priſoners to Philadelphia, and if the armed mob thought proper to take them from me, they might, it would then be their act, and not mine: I went to them, and told them to prepare for march immediately, for that we would ſet off to Philadelphia. The Lehi priſoners ſaid they would not do ſo, they would not expoſe themſelves to ſo much danger, but if I would ſuffer them to go to their homes, they would meet me in Philadelphia on the Monday or Tueſday following. I met Mr. Fries about the foot of the ſtairs, and he ſtill perſiſted in his demand of the priſoners, that I muſt give them up.

Cross examination. Had he a ſword with him?

WITNESS. I do not think he had a ſword at that moment. I refuſed, and went into the back room, and a perſon whom I did not know, told me, that if I did not give them up I ſhould not be hurt, but the life of Balliott, Eyerly and Henry were in danger. This was not an armed man. I did not like to expoſe the lives of thoſe men, ſo I reſcued them. Fries came in directly, and ſaid I had not given up Ireman, the miniſter. I told him I had; he then went out, and came in again, and ſaid he was without. He then mounted and went off.

ATTORNEY. Did you really apprehend any danger to the gentlemen who were with you?

WITNESS. I did apprehend that the lives of thoſe gentlemen would be in danger if I refuſed the priſoners.

Who had you then in poſſeſſion as priſoners?

We had Fox, Ireman and ſome others who had not ſurrendered themſelves, beſides the Lehi people.

PHILIP SCHLAUGH,

When I was at Bethlehem, which I expect was the 7th of March, the firſt I ſaw was that the company was ordered in rank, and when that was done, this Fries was in the entry of the houſe, where he was ſpeaking loud. I enquired who that was, they ſaid it was captain Fries: He ſaid them who was the greateſt tories in the laſt war, them was the head leaders now; then I went out of the houſe, and he went up to the marſhal, and when he came out again, he went up to his company, and told them "Well brothers, I went up to the marſhal, and aſked him about the priſoners, and told him I would have the priſoners, but the marſhal told me he dare not give them up willingly; I tell you, brothers, we have to paſs four or five centries, but I beg you not to fire firſt on them, till they firſt fire upon us: I ſhall be the foremaſt man; I ſhall go on before you, and I expect I ſhall get the firſt blow." Then he turned himſelf round. Mr. Mulhollan, and others begged him that he would not go on in this matter, they would rather go and ſpeak to the marſhal that he ſhould deliver up the priſoners willingly, if they would abſolutely have them.

Did the men ruſh on when he told them this?

Yes, they followed him. He then ſaid to them, you muſt not fire firſt, but if they do fire upon you, then I will order you to fire too, and help yourſelves as well as you can. I did not wait till the priſoners were releaſed, for when I heard this, I thought there was going to be warm work, ſo I got upon my horſe, and rode off to Eaſton as faſt as I could.

Thursday May 2.

JOSEPH HORSEFIELD, eſquire, qualified.

ATTORNEY. Pleaſe to relate the particulars of the affair at Bethlehem as far as came to your knowledge.

WITNESS. I live in Bethlehem; am a juſtice of the peace there, and was there on the 7th of March.—Shortly before the laſt general election, the ſpirit of diſcontent and oppoſition was ſenſibly felt in the county of Northampton; there were different meetings called in different parts of the county, among others, I was informed there was one at which the militia officers were particularly to attend, which I underſtood was intended to prepare a ticket for the election. At that meeting, ſundry reſolutions were paſſed, which appeared in public prints, among others, one was that petitions ſhould be formed to obtain a repeal of the alien

and ſedition laws, and the land tax act. I was informed that the captains of the militia companies were to be ſerved with a copy of each of theſe petitions: I was likewiſe informed that this was done, and a five penny bit each paid freely for a copy, though the Germans love their money ſo well. I think the people were told that the petitions merely contained a requeſt for the repeal of the houſe and land tax law. I have ſeen none of them. On the election day, the people pretty generally collected and, at leaſt in the diſtrict where I had a right to vote, the ſpirit of oppoſition againſt the meaſures of government were ſo univerſal, that a friend of government, by ſaying one word in favour of it, was ready to be abuſed, and I underſtood it was ſo in every election diſtrict in the county, and the county in general gloried that they had gained the day. Nothing material occurred, to my knowledge, from that time till the marſhal arrived there.

ATTORNEY. Did the aſſeſſments go on regularly before that time?

WITNESS. No.

What do you know of that fact?

I never was preſent at any oppoſition myſelf, for I moſtly ſtay at home.

Did not the ſpirit of oppoſition which had begun before the election, increaſe before the marſhal arrived?

It daily increaſed.

In the beginning of March, the marſhal of the United States arrived at Bethlehem, I think about the 3d. I having ſome perſonal acquaintance with that gentleman, waited on him, when he told me he was ſent to the county on buſineſs for the United States, and deſired me to inform him where ſeveral certain perſons reſided, againſt whom he had precepts from the diſtrict judge. I acquainted him with the courſes and diſtances. He then went to Nazareth, and returned again about the fifth, telling me he had ſummoned a number of perſons in Lehi townſhip, and that they were to be at Bethlehem on the 7th. On the 6th in the evening, I was informed he had returned from Millar's town, and on the 7th in the morning I went up to town, when he told me that he expected there would be ſome diſturbance that day, and alſo told me that he had iſſued ſummons's for the *poſſe commitatus*. Between 10 and 11 o'clock the poſſe came, I think they were about 14 in number. A conſiderable number of people from the neighbourhoood of Bethlehem, had collected, unarmed. Mr. Dixon arrived from Emaus about 11 o'clock, and informed the marſhal that on his way he met with a number of people collected at a tavern called Reiter's, in arms, both horſemen and footmen, about 6 miles from Bethlehem, and that he met a number on the road, partly armed, partly unarmed. About half paſt eleven, two men arrived at Bethlehem armed, from that quarter: they were diſarmed and ſent up ſtairs into a room: about the ſame time a number of perſons arrived from Lehi townſhip, who were alſo ſent up ſtairs by the marſhal in a room by themſelves: they were about eleven in number. I was preſent when Mr. Eyerly ſpoke to theſe priſoners, telling them that an armed force was formed with intention to reſcue them; the priſoners anſwered that they by no means wiſhed it: that they would ſubmit to go with the marſhal rather than be reſcued. In about an hour, I was looking out of the window up ſtairs, and ſaw riding into the yard a number of horſemen, beſides ſome footmen: I ſaid to the marſhal, I thought it was beſt for us now to go down and

ſee theſe people. I went down and aſked one of them what was his name, he anſwered Daniel Shaeffer. He had a ſword at his ſide, and two piſtols : next to him, on horſeback, was Henry Shankwyler, next to him was another horſeman accoutred in the ſame manner ; his name was Philip Daeſch ; there were alſo John Dillinger and Jacob Kline, not in uniform but with ſwords in the ſcabbard. I aſked them what they wanted : we are all civil people and have no arms, was my obſervation to them. Dillinger who ſeemed to ſpeak for them, ſaid that yeſterday the marſhal had taken Shankwyler and ſome other of their neighbours priſoners, that they were come to ſee Shankwyler's partner (accuſer.) The marſhal told them that the United States was the accuſer of Mr. Shankwyler. Dillinger ſaid he thought it was not right that he ſhould be taken to Philadelphia. The marſhal ſaid that the judge had ordered it ſo. I told him that I thought they were unacquainted with the government of the United States, and I thought they were in a very critical and dangerous ſituation ; that the United States in leſs than 20 days could muſter 10,000 men, which power I thought they could not with ſtand, and that it was beſt for them to ſurrender the priſoners to the marſhal, and go home. They ſaid that Shankwyler and the others were their neighbours, and that they would wait and ſee what ſhould become of them. They did not mention the others names. I aſked whether any more armed men would be there ; Jacob Kline anſwered, 50 more. With that we went into the houſe. After dinner the people collected very faſt, and Dillinger began again to ſpeak in behalf of Shankwyler. The marſhal told him it could not be otherwiſe, go he muſt : Shankwyler anſwered that he had a family to take care of, and that he would not go. With this, the marſhal and myſelf walked up ſtairs, and there ſaw a great number of armed people round the houſe, I think 120 or 130, and about 250 unarmed. I ſuggeſted to the marſhal that my ſuſpicions were very gloomy ; that I doubted whether he would ſucceed in taking off the priſoners, for I had quietly heard among the people that were in the houſe, and out of doors, that nothing ſhould ſatisfy them but the delivery of the priſoners : in front of the houſe was drawn up a number of men armed. I went up ſtairs and there I perceived ſeveral times, guns pointed up to the window of the ſecond ſtory at which I began to feel very diſagreeable. Mr. Eyerly, Mr. Balliott, Mr. Henry, and the others were occaſionly at the windows, though I do not recollect Eyerly being at the window, but the others were : I walked down ſtairs, and there ſaw men armed cloſe before the door, preſſing in : I preſſed through them, and heard two men ſay if Henry, and that damned Eyerly, and that damned pot gutted Balliott were there, they would tear them to pieces ; this man did not attempt to come into the houſe. I thought this was bad news, and I walked back again, and proceeded my way up ſtairs, and deſired Mr. Levering (the tavern keeper to cloſe the bar) thinking there was madneſs enough without ſtimulating it, which was immediately done. I deſired the marſhal not to protract the delivery of the priſoners to the law. Mr. Mohollan and ſeveral others there puſhed them back, but juſt then I heard ſome of the officers ſay, "boys, in the ranks, in the ranks."

COURT. Were thoſe two men whom you heard uſe the words juſt now related, paſſing in at the door.

WITNESS. No, they ſtaid in the yard.—I looked out of the window again up ſtairs, and there I ſaw a ſecond preſſure, to come in at the door ſome of the men who were in the ranks thumped their guns upon the ground, and jumped, pronouncing ſome unintelligible ſhrieks, ſavage like ſhrieks. I begged the marſhal, for God's ſake to deliver up thoſe men up ſtairs, for the reſcue was perfect in my opinion: the cloſing of the men would be only butchering, and I had no doubt the government of the United States would not let its dignity be trampled upon in this way. The marſhal ſtill continued to heſſitate. By this time a number of perſons had got into the houſe, adorned with large three coloured French cockades. The poſſe ſtaid up ſtairs at this time: I then worked my way down ſtairs again, in order to be ready for a jump. By this time I underſtood that the priſoners were delivered. After the priſoners were gone about ten minutes, there was not a ſingle armed man in, or about the houſe: ſome of the neighbours who had collected were ſtill there, ſome of whom were approving, and others diſapproving of the conduct of the inſurgents, but in my opinion, the majority were approving.

Have you any knowledge of the conduct of the priſoner at the bar, at Bethlehem?

No, I never ſaw him till I came down to this place, but I frequently heard the name of captain Fries called.

Cross examination. Did you ſee Mr. Henry or Mr. Balliott in the room looking out of the window?

WITNESS. Mr. Balliott looked out of the window but ſtepped back again pretty quick, afraid of the muzzles of the guns.

COURT. At the time that judge Peters iſſued warrants for the apprehenſion of thoſe people, do you think any magiſtrate in the county could have iſſued them, and made them returnable to himſelf?

WITNESS. I look upon it that the ſtate juſtices were a nullity. Many people came to me, aſked me if the law was dead: I told them No, they ſhould firſt hear of me being dead.

Cross examination. Was there any applications made to any of the juſtices of the peace?

Not to my knowledge, but I think the juſtices of the peace could do nothing with it.

JOHN MOHOLLAN, Eſq. ſworn.

ATTORNEY. Was you at Bethlehem on the 7th of March?

WITNESS. Yes.

Pleaſe to inform the court and jury what took place there.

WITNESS. The reaſon that I was there was from a ſummons I had received to attend the marſhal that morning. Agreeable to that ſummons I went there about 11 o'clock, and we went at the direction of the marſhal to meet the force over the bridge. Chriſtian Roths, William Barnett, and J. Hartſell went with me.

He then related the occurrence of the meeting the companies, and the delegation of three men from them, which was much ſimilar to the teſtimony of William Barnett, and Chriſtian Roths.

COURT. At what time did you firſt hear that the marſhal had theſe two men in cuſtody?

WITNESS. The firſt time I heard of it was by the men over the bridge.

What became of thoſe two men?

I cannot tell; the marſhal told me they were diſcharged, but I do not recollect ſeeing them.

Did you ſee the priſoner among this party?

No, not to my knowledge, if I had I ſhould not have known him, for I never heard of him before. Having met with thoſe horſe men before we came back to the bridge, we returned with them, and all made an halt in the yard. I ſpoke all I could to diſſuade them from the purpoſe about which they came, but all to no purpoſe. I had no anſwer that I could underſtand, for they generally ſpoke in German or broken Engliſh, which I could not underſtand. I always underſtood, generally, that they wanted the priſoners, and that they wiſhed to give in ſecurity, and let them be tried in the county: that if they had done any thing that was wrong, it was right they ſhould ſuffer, but that it was not right to take them to Philadelphia. I heard major Barnett ſay this who interpreted what they ſaid in German. After being a conſiderable time engaged with people as actively as I could, but it appeared to be but to little purpoſe, I then went up ſtairs with a view to take ſomething; as I was returning the ſtairs were ſo crouded I could not eaſily get down. Coming down I ſaw a perſon whom I underſtood to be captain Fries, and the marſhal ſtanding talking to him. I believe it was the priſoner at the bar. I heard them talk a few words: the marſhal ſaid that they were not doing right, and they muſt ſuffer: but I cannot recollect any thing particularly that was ſaid, but I obſerved that he often made a demand of the priſoners, but that he ſhould not be hurt; that he would be anſwerable for himſelf and the company, that none of his men ſhould hurt him that day, but that he would not be anſwerable for any others that did not belong to his company. I think he repeated this twice. I was there but a few minutes. I made ſome obſervations to the men adviſing them to conſider what they were about, for I conſidered it dangerous, and very wrong to proceed in this way. At this time there was a noiſe in the entry: I was afraid ſomething had happened, ſo I went down, but I do not recollect ſeeing Fries, the whole day afterwards. There was a great deal ſaid, but none of them ſpoke to me in Engliſh.

JACOB EYERLY, qualified.

Attorney. We wiſh you to relate what you took notice of at Bethlehem.

Witness. As to what happened on the ſeventh of March, I am not able to ſay much. I was out with the marſhal the day before, when he ſerved the proceſs. As we heard that the reſcue was intended. It was agreed by the marſhal to ſend expreſs to Eaſton, in order to obtain the poſſe to aid him in the execution of his duty: they accordingly arrived between 10 and 11 o'clock, to the number of 15 or 16. Mr. Dixon of Emaus told us that he had ſeen about 20 armed men at Reiter's tavern, and ſome at another tavern, beſides ſome on the road, and that he underſtood from them that they were coming to reſcue the priſoners. It was then agreed to take theſe priſoners, who had ſurrendered, up ſtairs. There were a number of people now collected now from the neighbourhood, and then it was agreed to ſend the deputation to meet the armed men. About that time I went down ſtairs into the back room, and there I ſaw thoſe two men whoſe arms had been taken from them; I did not ſee them come in,

I then went up ſtairs again, this was the laſt time I went down ſtairs, till after the priſoners were releaſed. I then ſaw thoſe three men come with Sharkwyler. I did not hear what paſſed, but ſaw Mr. Horſefield and judge Henry go to them. Sometime afterwards, I ſaw an armed force coming in, a great many on horſeback, and many footmen with muſkets on their ſhoulders: the horſemen had their ſwords drawn. The greateſt part of thoſe on horſeback came from Bucks county. Afterwards, the marſhal came up ſtairs and ſaid that they were determined to have the priſoners, and he believed that Mr. Balliott and myſelf would be in danger of our lives if we went out of the houſe, and then deſired me to undertake to guard the ſtairs, and told me to give orders that if any body would come up with force, they ſhould ſhoot them. I placed the guard on the ſtairs, at firſt there was but two. Some of the poſſe were at this time below talking to the people. After ſome time the guard told me that they got ſo violent, and threatened to come up ſtairs with violence, and requeſted of me that I might double the guard, which I did. As I was in the room, I looked out of the window and ſaw a company of rifle men, all with three coloured cockades, marching Indian file round the houſe: I counted them, there were 42 in that company: another perſon beſides myſelf was counting them, but I do not recollect who it was, though I rather think it was Mr. Balliott: they marched twice round the houſe. Another time when I was walking about the room a perſon who was along with me, I do not recollect who, told me that they were pointing their guns up to the window, and that he was ſure it was dangerous for me to ſhow myſelf at the window.

Objection was he re made by the council for the priſoner, againſt any hearſay evidence.

Attorney. Had you not reaſon to believe that your life was in danger?

Witness. There is not the leaſt doubt upon my mind, from what I heard, and from what I ſay, and from the marſhal's teſtimony, but if I had gone to any place where they could have done it, but they would ſhoot me, becauſe the people in general appeared to be in ſuch a rage that there was no reaſon in them.

Some farther objections was made by the council as to his ideas of the ſtate of things, but the court declared it right to ſhew the general impreſſions he felt.

Attorney. Did you, or not, abſtain from ſhewing yourſelf at the window, or amongſt the people.

Witness. Yes, as much as poſſible. There was nothing particular that I ſaw, except at one time when I was in the room, I heard a terrible huzza: this was in the afternoon. On this I went to the window to ſee what produced this noiſe, and I ſaw that captain Jarrett had arrived: he had juſt diſmounted his horſe, and had his piſtols in his hand, and was walking up toward the ſtairs. I did not remain long at the window, but juſt looked out, and ſaw him come in, and ſhortly after he came up into the room where I was; he had not his piſtols with him then: I had that moment received a letter from Mr. Rawle, attorney of the diſtrict, that Mr. Jarrett had ſurrendered himſelf and given bail, and that he declared he was a ſtrong friend to government. I then ſaid to him, if you are a friend to government, as you profeſs to be, you ought to go down and tell

your people to desist: to which he made no reply at all. He walked about in the room for some time, and then went down stairs. I did not see any thing more till the prisoners were released. The only time I saw Mr. Fries, the prisoner, was a few minutes before the prisoners were delivered up. I walked out of the room and saw Mr. Fries upon the head of the stairs, speaking with the marshal: shortly after, the prisoners were requested to go down, but the minister staying a little while up in the room, there was a call made for him particularly, and therefore I went and requested him to go down. Shortly after, the armed men went off. I looked out of the window and saw Mr. Jarrett parading his light horse in rank before the door. He then gave orders to march, and they went off.

ATTORNEY. Did you perceive any thing of the prisoner after this?

WITNESS. No, that was the only time I saw him during the day.

You were one of the commissioners appointed to carry into execution two acts of Congress; one for assessing houses, and the other for laying a direct tax?

Yes.

Was there not, before this time, a general opposition to the execution of this law throughout the county of Northampton?

After I had received my commission, which was sometime in August 1798, I had received a letter from the secretary of the treasury, requesting me to take some pains to find out suitable characters to serve as assessors. I did, in consequence of that, write some letters to some of my friends, in the counties of Northampton, Luzerne and Wayne, which constituted my division: in Wayne and Luzerne, I found no difficulties whatever, but received a number of applications sufficient, and accompanied with recommendations. In Northampton county I was not so successful; I had but two recommendations from that county; it was therefore necessary for me, from the best information which I could obtain, to endeavour to find men of suitable characters in each township; and likewise to get a number of blank commissions, in case some of those appointed should refuse to accept of the office. I received information at Reading, at the time the board of commissioners met, from the commissioner in Bucks, that he had received information from a gentlemen in Philadelphia (Mr. Chapman) that he had travelled through a great part of Northampton county, and that in every tavern where he stopped, this tax law was the general topic of conversation, and that great pains was taken to find out who the persons were that were friends of the government so much as to be assessors, in order to persuade them not to accept of the appointment. Although I could not believe it was the case at that time, yet I found it was the case afterwards.

Cross examination. Do you know this traveller?

WITNESS. No.

Agreeable to my duty, I gave notice to the assessors to meet me at a certain place. I should have first said that I appointed the assessors agreeable to the best information I could collect, I took one man from each township, such as was thought qualified for the business. I sent them their commissions, and with them notices to meet me at a time and place appointed in order to receive from me their instructions.

He then mentioned the names of the assessors, and the townships to which they were appointed.

I appointed a meeting of the assessors of the third district at Nazareth, on the 3d Thursday in November, two of them did not attend, and some of the others who did attend begged to be excused from serving. I asked their reason, and told them I could not very well excuse them, they told me that the people in their different townships were very much opposed to the law; that they thought it was dangerous for them to accept of it. I found that they, as well as the people, had a wrong idea about the law; and I was so happy that day as to prevail upon all those that wished to be excused accepting the appointment, upon explaining the law to them, to accept it. The next day I met the assessors of the second district at Allentown, where all attended but one. I had the same difficulty there as at the other place, and it was not without much difficulty that those who did appear, that they did accept of the appointment. I then left the blank commissions with Mr. Balliot, and requested him to appoint some persons in the room of Mr. Horne, who had refused. The Monday following met the assessors of the other district at Chesnut Hill township. Previous to that I had seen Mr. Kearne, who was the assessor, appointed at Easton; when I mentioned to him that he was appointed an assessor, he told me that it would not suit him to accept of it. I requested of him that he might name some suitable person, and qualified for it, and I would be willing to accept him. He mentioned Jacob Snyder, and told me he would notice Mr. Snyder to meet me with the rest. When I came there two of the assessors did not appear, and one from Hamilton did not appear willing to accept of it, but after a great deal of explaining and persuading, it was prevailed upon. Just as we were going, Synder came, he told me that he had received his notice, and that he was not willing to accept it; that the people were very much opposed to the law, and he did not very well understand it himself, but he thought he would endeavour to get some information, and that when he came there, the information he received was such, that he was determined to go after me, and accept of the appointment, if he were to ride 50 miles in order to accept of it, for that he had been wrong informed about the law. I then went up to Wayne county where I had no difficulty, except that one assessor told me that he was persuaded with difficulty to accept of the appointment. As I was going to Luzerne county, the assessor from Hamilton township, (Nicholas Michael) came after me, and told me that he had been obliged to fly from his house in the night to save his life, and begged of me to accept of his resignation; I told him I could not accept of it, but that I would see perfect justice done. At my request he went with me to Easton, where we went to see for Mr. Sitgreaves, attorney of the district, but not finding him at home, we went to Judge Trail, in order to take his deposition. He begged that I would grant the favour for him to consider of it till the next morning; I did, and next morning he came to me and begged me "Mr. Eyerly, for God's sake put me to jail, so that I may be secure of my life, for if I inform against these people, I and my family shall be ruined. I told him that I would do no such thing, for that I had too much friendship for him; that I would give a few lines to the constable to request him to call a township meeting, and I would meet him in the township. I requested Mr. Henry to go there with me: I had reason to believe that this opposition arose from misrepresentation, which I supposed was given to the people by a few gentlemen, who had travelled through

the county a few days ſince. When we came to Hamilton townſhip, there were about 60 or 70 perſons aſſembled, three or four of them in uniforms. their arms was behind the door at the houſe of Mr. Hellers. I then told them that I was come as their friend, and without any deſign of taking the leaſt advantage of their conduct in oppoſing the aſſeſſors: that I had come to read the law to them, and explain it. I did ſo, and pointed out the impoſitions practiſed on them. Mr. Henry aſſiſted me as much as he could, but all to very little purpoſe. The aſſeſſor after this again begged me, for God's ſake, to accept of his reſignation. As there was a number of them that complained againſt the aſſeſſors. I propoſed to them that though I had no authority to it, yet if I thought it would be a favour to grant them that indulgence to elect their own aſſeſſor themſelves, I would grant him the appointment. They told me they would do no ſuch thing, for ſaid they " if we do this, we at once acknowledge that we will ſubmit to the laws, and that is what we wont do. I then enquired for a ſuitable man, and John Huſton was mentioned, who was likewiſe elected aſſeſſor under the county rates. I called him into a room, and requeſted him to accept the appointment, he told me it was impoſſible at the preſent time, but he ſhould, whenever things appeared more favourable, ſo that he could go through, be willing to do it.

I hear that the buſineſs is now done.

Attorney. Pleaſe to relate who were the perſons that travelled through that county, and encouraged the oppoſition.

Witness. The laſt week in December, or the firſt of January I received a letter from Mr. Heckavelter, the aſſeſſor of upper Milford : by which, he informed me that he was ſtopped by a regular deputation from the townſhip meeting, conſiſting of 3 men. I ſent a line to Mr. Heckavelter, and wiſhed him to give notice to Mr. Schymer, Mr. Moretz, and ſome of the leading men in the townſhip, that I would meet them at ſuch a time, and explain the buſineſs to them. When I came, in conſequence, within 4 miles of the place, I was requeſted by a friend, not to go, for that the people were ſo violent, that if I did go I ſhould certainly be killed: I replied to them that I would go, I was not afraid of any of them. I took Mr. Henry along with me ; when we came there, I found about 60 or 70 perſons collected at the houſe of John Schymer. I ſuppoſe about 20 of them had French cockades in their hats, red, blue and white. Mr. Schymer then took me into his own room ; there were about eight or ten in the room. Mr. Schymer aſked me if I had ſeen the petitions, he gave one of them to me, and requeſted that I would read it, which I did in the preſence of another perſon ; there were but two in the company that underſtood Engliſh. While I was reading, theſe two men began to ſhake their heads, they ſaid it was not ſuch a petition as they had been told. I then aſked them whether the general oppoſition was not on account of the ſtamp tax, and the houſe tax ; they ſaid yes. I then told them there was not a word in this petition againſt the ſtamp act ; they ſeemed to be altogether ſatisfied, and ſaid that they had been made to believe it was. I then went into the next room, where the people collected : ſome of them appeared to be extremely violent and very abuſive. I told them I had not come there to be abuſed by any body ; that I had come there as a friend, to inform them of the law which it was important ſhould be underſtood. There was a report among them that it was no law ; I read the law to them, and explained it in the German language, and told them it was their

duty to submit to it. One of them of the name of George Shaeffer jumped up before me, and said, Mr. Eyerly, it is no law ; I told them that if they did not believe me, they might enquire of Squire Schymer whether it was or not. Mr. Schymer told them it was a law ; upon which Shaeffer replied, " admitting it is a law, we will not submit to it". He then farther said, here I am, take me to gaol, but you shall see how far you will bring me. Upon which a great many of them jumped up and said, yes, by God, if they shall only attempt to take any one to jail, we would soon have him out again. Some of them made use of very abusive language against the assessor, calling him a tory rascal and the like ; and as the assessor had requested me to accept of his resignation because it was not in his power to go through with it, I proposed to them, that if they had any objections against the assessor, that they should elect one, and I would give him his appointment : to which some of the most sensible and most moderate replied, no, if it must be done Mr. Heckavelter shall do it, and some of the others said, we will do no such thing, if we do, we at once acknowledge that we submit to the law, and that is what we will not. I then went over to the tavern close by, with Mr. Schymer, when Mr. Heckavelter came to me, and told me that he was in danger ; that there was three of the Shaeffers were going to give him a licking : I requested him to stand by me, and I would see him safe. We then went off.

Cross examination. Did they come up to beat him ?

Witness. Yes they did, all three of them. Mr. Heckavelter told them he would not have any thing to do with them, and they charged him something respecting a liberty pole at Millars town.

Did they threaten to beat him on account of his going on with the laws as assessor ?

No.

Attorney. But it was no private quarrel was it ?

Witness. No, Mr. Heckavelter told me it was not.

When was the liberty pole erected ?

Two weeks before that, but after the dissentions arose.

Were those poles erected any where, but where this opposition prevailed ?

With a few exceptions : there was one place where the law was fully executed, and some others that followed the example, where the law was executed.

Was the law executed at Millars town ?

It was not executed there, nor at upper Milford till about two or three weeks ago at farthest. I then agreed to go to Millars town, where one of the Shaeffer's lived. Mentioning this to an assessor, (John Roming) he requested I would not do it ; he told me that the people were so violent that he would not go upon his duties if any body would give him £.500 to do it, if he did, he must run the risk of losing his life. I then desisted.

Attorney. The laws were not excuted till after the army came up, and not before were they ?

The witness was going on to say what he had been told, but hearsay evidence was inadmissible.

—I then went to Mr. Trexlers where I saw Mr. Bobst, who gave me information of Heidelberg, Wiessenberg, Lynn, and Low Hill : he told me that at a meeting at one of those places the people had drawn up a paper not to submit to the laws : he then told the people that they were

certainly doing wrong, and that they would bring themſelves into trouble if they went on that way: upon which they (the people themſelves) deſtroyed the paper. He ſaid the ſame of Heidelberg. He likewiſe informed me that in the townſhip where he lives it was impoſſible to execute the laws.

At what time were the laws executed in thoſe four townſhips?

Since the troops have been there. He went ſo far as to ſay that all in the townſhip oppoſed the execution of the law, except three or four.

Hearſay evidence ſtopped again by the council, becauſe the conſtitution provides that the accuſed ſhall be confronted with his accuſers.

Mr. Rawle contended, that, as he wiſhed to ſhew the court and jury the *general* ſtate of that country, the hearſay evidence of Mr. Eyerly in his official capacity as commiſſioner, to whom reports of the aſſeſſments were made, was admiſſible.

So far as explained the general temper was allowed.

Witness. —In Penn townſhip the aſſeſſor did not meet us, he refuſed to accept the appointment, well aware of the difficulties that would occur, and a general rule was admitted to meet thoſe difficulties. I received information from Mr. Balliott that he had found a man in that townſhip who was willing to execute the office. At my requeſt, he ſent him a commiſſion, but the man was obliged, before he took the oaths, to return it again, declaring it was impoſſible to do it. This was ſometime in January. Sometime afterwards he wrote to me of another man who would accept. I requeſted him to ſign his commiſſion. I received information while the marſhal, Mr. Balliott and myſelf were about the county, that as ſoon as the people in the townſhip knew that he had received his commiſſion they raiſed a mob.

When was Penn townſhip aſſeſſed?

About ten days ago.

Court. Had you not reaſon to believe that, owing to the oppoſition in that townſhip the law could not be executed?

Witness. It could not.

Was there ſimilar oppoſition in any other townſhip?

In Moore townſhip there was ſome oppoſition, but when the aſſeſſor was oppoſed he called a town meeting. That townſhip has been aſſeſſed about two months.

Mr. Lewis inſiſted that if ſuch evidence were allowed, it would be neceſſary to produce the commiſſions of theſe officers, and he could ſee no reaſon why themſelves could not have been preſent as evidences on the proſecution, inſtead of that teſtimony coming through Mr. Eyerly.

Mr. Rawle contended that if it was neceſſary to prove commiſſions, there would be no end to the enquiry.

Attorney. Were you preſent at any other meetings?

Witness. No.—On the firſt or ſecond of March laſt, when the marſhal came to Nazareth, and told me that he had proceſs' againſt a number of perſons in Northampton county, he requeſted me to go with him: I went with him, firſt to Lehi townſhip, where the marſhal ſerved proceſs upon thoſe people for oppoſing the aſſeſſments, without any difficulty: we then came to Bethlehem, and then to Emaus: the firſt houſe the marſhal had to ſerve in was a ſubpœna upon George Syder, where, after being abuſed by the houſe, we were ſworn at and abuſed by him: he had a large club in his hand.

COURT. Did he abuſe you before you ſpoke to him ?

WITNESS. Yes.—He called us raſcals, highway robbers and the like : the marſhal told him he only had a ſubpœna to appear at Philadelphia to give teſtimony ; to which he anſwered, in German, he would be damned if he would go. The marſhal finding he could do nothing with him, requeſted Daniel Schwartz ſen. to read and explain it to him, and we left it with him to ſerve. We then went to Millars town to ſerve a warrant on George Schaeffer, but we were told he was gone to Philadelphia : we went to Seward's tavern. The marſhal and myſelf then went to Shankwyler's where there was at leaſt 50 aſſembled in the room. Not knowing Shankwyler, Mr. Balliott pointed him out, and the marſhal took him : while the marſhal was talking with Shankwyler, the croud incloſed upon us, and abuſed us very much, and in a very menacing manner, accompanied with an almoſt univerſal cry of ſtrike, ſtrike, ſtrike, ſo that for ſome time we did not know what would be the conſequence. The marſhal this time was perſuading Shankwyler to ſubmit, telling him the conſequence of oppoſition : he at firſt declared he would not, but at length he ſaid he would do as Jarret did. Some of the people then ſaid, that if Shankwyler was to be taken out of his houſe, they would fight as long as they had of drop of blood in their bodies. The marſhal then turned round to the croud, when they were ſo violent, and told them that Mr. Balliott and myſelf were under his protection. I forgot to mention that while the marſhal was talking to Shankwyler in the bar, one of the perſons preſent tore the cockade from Mr. Balliott's hat, while he was turning round to ſpeak to the marſhal : Mr. Balliott did not for the preſent know but it was a blow ſome one had given him. They then made back a little. Having found it impoſſible to do any thing farther, Shankwyler promiſed to meet the marſhal at Bethlehem. We then went out of the room, but before we came out of the houſe there was a terrible huzza in the room. I then ſent for a conſtable at the requeſt of the marſhal, to go with him and ſhow him the perſons and places of thoſe againſt whom he had proceſs. I remained while he ſerved the proceſs' at Mr. Irexler's, and it was there we firſt received information that an attempt would be made the next day to reſcue the priſoners. We arrived at Bethlehem that evening the 6th of March, and then the occurrences happened of which I have given teſtimony as far as I know.

Some converſation here occurred reſpecting the teſtimony of Mr. Eyerly where he ſaid he had appointed aſſeſſors : Mr. Eyerly corrected himſelf, that he meant he had recommended them to the board. But Mr. Lewis ſaid he ſhould expect the records to be produced to the court, that the manner and legality of the appointments might be ſeen.

SAMUEL TOON, ſworn.

Teſtimony tranſlated by Mr. Erdman.

ATTORNEY. Where do you live when at home ?

WITNESS. At upper Milford in Northampton county.

Do you belong to any company of light horſe ?

Yes, to captain Jarrett's.

What is your ſtation ?

A trumpeter.

Were you requeſted by any body to go with a party to Bethlehem ; by whom, and at what time ?

On the 7th of March, about 8 o'clock I went to the houſe of Daniel Schwartz.

Did you go, or were you ſent to Schwartz?

I went of my own accord, becauſe I heard that the light horſe were to meet there, when I came, there was one of the light horſe there, named Samuel, the ſon of Daniel Schwartz. I aſked him who ordered the company together, and what they were about to do? he ſaid that John Fogle the lieutenant had directed them to meet at Guiſe's tavern, about 3 miles from Bethlehem, on this ſide: he then aſked me if I would go along. I anſwered, no. Daniel Schwartz had another ſon named Daniel, who wanted to go along, but the old man would not allow it, becauſe he had no regimentals or uniform.

Attorney. What is meant by uniform?

Witness. The cap and coat.—Old Schwartz then told his ſon that he ſhould go to a neighbour, and ſhould borrow his coat and my cap. I would not lend my cap, becauſe I told him I might want it myſelf, if I could get an horſe, as I told him I had it in my heart to go.

Do you know what they were going for, or was it mentioned at all?

I did not know that morning what they were going for.—If that is all your excuſe for not going, old Schwartz ſaid he would lend me his horſe, and give me a dollar in the bargain. His ſon, young Daniel he would not allow to go along, but he begging very hard, he would allow him to go as hoſtler, to take care of the horſes. They went, ſome of them as far as Guiſe's tavern, ſome of them were in regimentals, and ſome not. I and Schwartz's two ſons went, and when we came to Guiſe's there was no officers.

How many went from Schwartz's houſe?

Six: Henry Staeler, myſelf, Adam Stahlnaker, and Schwartz's three ſons.—When we came within half a mile of Guiſe's, we overtook a company of riflemen of about 30 ſtrong. They had no officer with them. Stahlnaker was one of the lieutenants, but did not meddle with the company, nor was he in regimentals, nor in arms. They waited about two hours for Fogle, the firſt lieutenant, but he did not come. Captain Jarrett was down at Philadelphia. When I found there was no one to take the command, I determined to go no farther: then there began a quarrel among them, ſome of them were willing to go, and ſome of them were not. Stahlnaker and myſelf then propoſed to go to Bethlehem, and we would bring them advice what was doing there, if they would wait an hour, and then they would know what was beſt to do. I then took off my regimentals, and put others on, belonging to my brother-in-law, the tavern-keeper. Some were willing to do this, ſome were not. They then went after me, and told me that I muſt put on my regimentals, and take my trumpet. I refuſed this, and told them, I would not go a ſtep farther unleſs there was ſome officer who would take the command and anſwer for it. They then agreed to it, and choſe Andrew Schiffert. He then ſaid he would accept of it, if they would follow him, obey his orders, or his advice. They then went on to Bethlehem.

Did the number increaſe?

The rifle paſſed by, but the number of horſemen did not increaſe.

How many horſemen were there?

There were only about eight or nine at Guiſe's, but there were a great

number of our people on horſeback, here and there one of them with a gun. When we were about half a mile on this ſide the bridge, we were met by four perſons from Bethlehem.

Had you ſettled what you were going for?

I had no intercourſe with any one of them on the ſubject, becauſe I was always a good way before the troop.

Did you not hear at the tavern?

No, I did not hear any particular reaſon for going to Bethlehem.

Why did you go with them?

Becauſe I was afraid of getting into trouble, and yet I was afraid if I went there.

Why afraid?

Becauſe I ſuppoſed they would take the priſoners.

Why did you ſuppoſe ſo?

Becauſe I heard here and there one or two ſay that they would not ſuffer the priſoners to go to Philadelphia with the marſhal.

Did you blow the trumpet as you rode a head?

Yes.

What paſſed when you met with theſe four gentlemen?

There four men perſuaded us to go back again, and there was here and there one that was willing to go back, among whom was Schiffart the captain: as they would not follow him, he laid down his commiſſion again. They then went all in confuſion, till we came to the bridge: all mixed one with another.

What did thoſe people do who refuſed to go back?

There came one to them and told them that the two rifle men were priſoners, which irritated them very much, and they ſaid they would go and get them; they would have them.

Was this before or after the gentlemen arrived from Bethlehem?

It was after they arrived, that they heard thoſe two men were impriſoned?

What was the converſation between thoſe deputies and the people?

I do not recollect much of their diſcourſe, but I heard a good deal of altercation between them: they were determined that the priſoners ſhould not go to Philadelphia, and that they would go to Bethlehem.

COURT. What priſoners did they ſay?

WITNESS. I do not know: they only ſaid the priſoners. However theſe deputies brought them ſo far that they agreed not to go to Bethlehem.

ATTORNEY. Upon what terms?

The gentlemen told them they would bring themſelves into great trouble, for an army would be marched againſt them. There was no conditions or terms made beſides this. They then proceeded and choſe ſome people to go with them to the marſhal, to ſee whether he would give up theſe two men, and then they would return to their homes. They then requeſted me to go over as one of the deputies with two others: one of them was Yieſly, a rifle man. I agreed to go, provided they would remain there till we returned. We then went, but without any arms, but we were ſcarce over the bridge before a great part of the light horſe followed us, and arrived at the tavern before we could come there.

ATTORNEY. What light horſe was that?

I did not obſerve them all, for they rode very faſt, but it was the company I belonged to.

Had any of the Bucks county people come up at that time?

Not any that I know of.—When I came to the tavern I did not want to go in, but Mr. Mohollan and the others took us into the marſhal; but the greateſt part of our company had come in, and therefore I could not tell what to ſay for them in their behalf. When I came to the marſhal, he aſked what was their deſign: I anſwered that I did not know; but Yieſly demanded of him the two riflemen who were made priſoners, but I cannot ſay for certain whether he demanded any more priſoners of him. The marſhal then read the orders which he had from judge Peters: we then went out of doors.

Did not the marſhal deliver up theſe two men.

Not at that time.

Did you all go back to join your companies?

I cannot ſay whether the two others did or not. I remained where I was.—About half an hour after the rifle company arrived; marched round the houſe, and formed in rank before the houſe.

Croſs examination. Was this before the two priſoners were given up.

I am not ſure whether it was or not, becauſe I do not know the time they were given up, for I went up in the room with Mr. Balliott and Mr. Eyerly.

Did any horſemen come with the riflemen?

There came now and then ſome horſeman, ſome armed, and ſome unarmed, and they hurried into the yard.—When I ſaw them ſtanding in a rank I went down ſtairs, and aſked captain Staeler how he came over when he promiſed not to come over. His anſwer was, that the Bucks county people had come, and they all come over together. They firſt ſtaid behind the houſe: the houſe was all in confuſion.

Attorney. What did they aſk for, or demand?

Witness. I heard ſome of them ſay that they wanted the priſoners out, and that they would force themſelves into the houſe. I came out of the houſe ſeveral times to pacify them, and ſo did Shankwyler come out twice to ſpeak to them.

Attorney. Did you ſee the priſoner at the bar?

Witness. Yes, I ſaw him once ſpeaking with the marſhal about half way up the ſtair caſe.

Did you ſee him come down and ſpeak to the people who were in the yard?

As they wanted to go in by force, he told them they ſhould wait a little, for that he would ſpeak to the people inſide a little more firſt.

Did you hear what he ſaid to them afterwards?

No, he then went away, and they forced themſelves in at the door. I with ſome others tried to keep them back all we could.

Did you ſucceed in keeping them out of the houſe at that time?

I ſucceeded in keeping them off, but one of them was very anxious to get in, and told the people that they ſhould pull off their gloves, in order to feel the trigger, and cock the better.

Who was this?

It was Jacob Ingleman.—Staeler then formed his company in a rank. One Henry Hoover, who was ſtanding in the entry after they had formed,

ſeemed to think the time too long, and ſaid if they would only ſend eight men to him, he would ſoon have the priſoners. The people then got in, one after another, and the entry became almoſt full. I believe at that time the priſoner at the bar came and told them not to be afraid, but that they might now march on.

COURT. At the time Fries ſaid that, were the men in or not?

They were in the entry, and a great many people were there: I was in the back of the houſe, they then marched towards the ſtairs where the guards had left. The marſhal was then quite alone, and he told them he would deliver up the priſoners. The priſoners then, came down ſtairs I believe, for I did not know them: I had not the leaſt perſonal acquaintance with one of them.

Was Fries any way diſtinguiſhed by his dreſs, or ſword, or cockade?

I never was acquainted with Fries before: he had on then a great coat, a cocked hat, and a black feather: I did not ſee him with a ſword.

Cross examination. Did you hear what paſſed between Fries and the marſhal on the ſtairs?

No, I was ſtanding below; I only ſaw him there.

Did Fries ſpeak Engliſh or Dutch?

Sometimes he ſpoke Engliſh, ſometimes German.

Friday, May 3.

ANDREW SHIFFERT, ſworn.

Teſtimony tranſlated.

Was you one of the armed party that went to Bethlehem on the ſeventh of March?

Yes.

To what company did you belong?

To Jarrett's company.

Inform the court and jury how you came to go, what your motive, and what the object of the expedition.

I was informed by John Hoover that all the light horſe were to meet at Martin Ritter's at ten in the morning: I was not at home when he came, but I was informed of it. I then went over to Ritter's the next morning, (on the ſeventh of March) and when I came there, I aſked what was to be done. Their anſwer was, that they were going to Bethlehem to releaſe the priſoners.

COURT. What priſoners?

WITNESS. The priſoners from the marſhal.

To what townſhip do you belong?

To Saliſbury. I told them that if they were to do this, they would find what would be the conſequences. The others ſaid that if they got the priſoners clear that day, there would be nothing done, it would be all over: that if they came with arms againſt them it would be all at an end.

If who went with arms?

If the ſoldiers went with arms.

Did not you enquire who had appointed them to meet?

No.

Did you not aſk when you were at Ritters?

No. At Ritter's I wanted to go home, but they would not let me, telling me that Fogle would be at Guiſe's tavern, whereupon I agreed to go ſo far with them. Coming there, Fogle was not there, and I and Sa-

muel Toon wanted to go home, for there was no officers there. They then agreed to chooſe an officer, when the choice fell upon me; I told them I would not go with them without they would obey my orders, and not ſay any more about taking the priſoners from the marſhal. They profeſſed to do ſo, whereupon we proceeded to within half a mile of the bridge, and there we were met by four gentlemen from Bethlehem, and as they repeated again that they would have the priſoners, I ſaid I would have no more to do with them. They then went into Bethlehem, but I did not go with them, but in about two hours I went in to ſee what they were about: I ſtaid this ſide of the bridge 'till then. When I got to Bethlehem I was informed that they had got the priſoners out. I remained there about half an hour and then rode home, ſo that I know not what happened.

Did you hear that the marſhal had taken two men priſoners, at what time and where?

I heard that two men were diſarmed: I heard it on this ſide the bridge.

Did you hear it while the rifle company, and the others were there together?

It was a perſon who came from Bethlehem that told of it, but I cannot tell who.

Was it before the deputation arrived?

I cannot tell, but I did not hear it before.

Had the Bucks county people come up before you left that place where you ſtaid on this ſide of the bridge?

Yes, I ſaw them ride up at about two o'clock.

COURT. Was Jarrett's and Staeler's companies gone over the bridge when the Bucks county people went over?

The light horſe were, but I am not ſure of Staeler's.

Did you enter into converſation with the Bucks county people?

No, not any.

The evidence here was cloſed ſo far as related to the affair at Bethlehem: Mr. attorney then introduced the following, preceding and ſucceeding events to ſhow the ſtate of the country, and the priſoner's intention.

JOHN DILLINGHER, ſworn.

Teſtimony tranſlated.

ATTORNEY. Where is your home?

WITNESS. In upper Milford, Northampton county, about ſix miles from Millars town.

Do you know of any rumour or report in your neighbourhood that the marſhal was coming up to arreſt ſome perſons, before he came?

It was talked of, as ſuſpected that ſome perſons would be arreſted.

COURT. On what account?

I can give no account of that. The report was that they would be arreſted to be taken to Philadelphia.

Was it reported, or any propoſition made among the people that if any body ſhould be brought to Philadelphia, that it ſhould not be ſuffered?

It was ſaid, that if any perſon was to be arreſted innocently, it would be very hard for ſuch a man, and he ought not to be ſuffered to ſuffer. And further it was ſaid that ſomebody had ſworn againſt Shankwyler that he had two piſtols and a ſword on his table, and that he had ſworn that if the aſſeſſors ſhould come, he would ſhoot them. I and my neighbours

ſaid that Shankwyler never owned a pair of piſtols, nor did they believe any were ever there except a traveller brought them there. [He kept a tavern] I then heard that the marſhal had arreſted ſome perſons at Millars town. The following day (6th of March) captain Staeler came to my houſe, and I aſked him whether he had been in Millars town. He anſwered yes. I aſked him whether it was true that Shankwyler had been arreſted by the ſheriff. (Becauſe at that time the term *marshal* was not known to them.) Staeler anſwered, yes, and that he was to be the following day at Bethlehem; and aſked me whether I would go to Bethlehem likewiſe, and told me that more people were going up to ſee, I ſaid I ſhould alſo like to go and ſee, provided the people would ſave themſelves from getting into trouble. I then dreſſed myſelf to go away: Staeler aſked me if I would not take my rifle with me.

COURT. Were you one of captain Staeler's rifle company?

WITNESS, No.

What company did you belong to?

To no one particularly; only the militia.—I then anſwered no, for what? He then informed me that there were a number of people to meet at Ritter's tavern, whence he heard they were to proceed to Bethlehem, and they would go there pretty early, to exerciſe a little, and that I ſhould go in the ranks to make a ſhow, becauſe his company was not compleat.

COURT. Was it muſter day?

No, but they had frequent meetings in order to exerciſe themſelves. I then agreed that I would take my rifle ſo far as that. As I was dreſſing when he came, he aſked me what I was dreſſing for: I told him that I was going to my mother in law, to fetch her ſome flax to ſpin; ſhe lives in Bucks county, about a mile on this ſide of Conrad Marks's houſe. Whereupon, he (Staeler) deſired me to tell young Marks that the light horſe were going to Bethlehem; and that he ſhould go likewiſe if he pleaſed. Before I came to Marks's, I ſaw a light horſeman croſſing the road into another road: when I came to Marks's I ſaw only his wife and children and a ſtrange man there: I aſked Marks's wife what light horſe man that was; ſhe anſwered it was her ſon; I aſked where he was going: ſhe ſaid he was going over yonder where they were aſſeſſing houſes, to go againſt the aſſeſſors. I then left the meſſage Staeler directed me.

Did you go farther into Bucks than where your mother-in-law lives?

No. I entered into no other houſe than Marks's and my mother's.

What time of the day were you at Marks's?

About one o'clock.

Did you not mention to John Sthymer, Eſq. that the people would not ſtand by him, and that he would not be ſupported, when it was reported that a warrant was iſſued againſt him, but that if he remained firm, he would?

I do not recollect any ſuch thing.

WILLIAM THOMAS, ſworn.

ATTORNEY. Do you live in Bucks county?

WITNESS. Yes.

Did you go to Bethlehem on the ſeventh of March?

Yes.—On the fifth of March we heard that the aſſeſſors were going round to aſſeſs the houſes in Bucks county: they had aſſeſſed a few of the houſes about already: my brother was at Jacob Hoover's, and I was

there when he told me to tell two of our neighbours to let the assessors go round.

Were you not on the 6th of March desired to join the party going to Bethlehem?

On the 6th in the morning I was at Jacob Hoover's and he told me to go to Adam Broutler and Peter Coome to tell them to come to his house. On the road I met captain Kouder: he told me I must come along back again down to the mill, for his company was coming together there that day: when we came there, several were met, and they were beating the drum: part of them were armed. There were about 15 there in the whole. We then went to Jacob Fries's tavern; then the people said they went to see the assessors, but I dont know what for.

COURT. Where there any more at Fries's than those who came from the mill?

WITNESS. Yes there were a great many more, I think about thirty. John Fries and Kouder then sent some (two) horsemen named John Gettman and Conrad Marks, the former had a gun, to see if they could find the assessors.

ATTORNEY. What were they to do?

WITNESS. Why, their directions was, that if they could find them they should bring them to Quaker town, or to Jacob Fries's tavern. After the horsemen were gone, then the order was for the company to go to Quaker town.

Were the party pretty generally armed?

A great many were not, and many who were not had clubs. I cannot tell how many were armed, but the greatest part had either arms or clubs.

Was there a drum and fife?

There was when we were at Quaker town,—We all stood in a rank, and fired off, and hallowed huzza. One party went to Enoch Roberts's tavern, and the other to David Zeller's, and soon after we were there, the assessors came along. They were esquire Foulke, John Rodrick, and Cephas Childs. I was at Zeller's when they came along, and they all began to run out of the tavern. When I came out they had Foulke by his horse's bridle, and him by one leg, and they told him to get off. It was captain Kouder that had hold of him; then John Fries came up and told him to get off. Jacob Hoover came up, I thinkbefore Fries, and tol Kouder to go away and not abuse the man, and he took hold of the bridle and spoke to him. Fries told Foulke to get off, he wanted to speak to him. Then George Mumbower came up, and stood at the back of the others, giving one of them a knock with the butt of his gun, and told them to pull him of; Jacob and John Hoover told them they should not abuse the man, for he would get off without. With that the esquire rode up with them to the shed, and got off. They then went into the tavern together. Then John Fries told him that he had forewarned them yesterday not to assess the houses, and yet they had come to day again; he then told him that he should show his writings, what he had done in the township. Which he did, and John Fries read them, and gave them to him back again. I then went into another room, and when I came out again, Childs, the other assessor, was sitting on the table, with five or six about him. When I came up to him, I told him that they should not abuse him, for I used to know him: at this time they were abusing him?

Attorney. How were they abuſing him ?

By ſpeaking to him ; I do not recollect what they ſaid, but they told him he ſhould not have gone about when they had forwarned him the day before, and they made him promiſe that he would not come again till farther orders—'till they knew how the law was. They told him they thought they had as fit men in their townſhip as what he was, and they wiſhed to chooſe a man in the ſame townſhip if they muſt have it done. As to Rodrick, I did not ſee him.

Attorney. Did you hear any cry of " fire" after Rodrick ?

Witness. No.

Did you ſee any gun ſnapped after him ?

No.

Did you ſee any thing relating to a travelling man named captain Seaborn ?

Yes, he was there, he was drunk, and ſome of them aſked him whether he was for liberty or government, he ſaid government : Peter Gobble ſaid if he ſaid that again he ſhould be whipped. They were all pretty well drunk, but I was not drunk.

Was Fries drunk ?

I do not recollect ever ſeeing him drunk : Kouder was, and ſo might Fries for what I know, but I had known him ſome time, and knew he was a ſober man.

Did you hear any talk about tories there ?

Yes, they talked of tories and ſtamplers : Foulke was one they called a tory, and ſo were ſeveral others.—A young fellow then went in to ſtrike Seaborn, but I told him he ſhould not ſtrike a man that was drunk : I knew him when he lived at the river. He ſtruck him once or twice, but I told him if he ſtruck him again, I would ſtrike him. Then we went down to Jacob Fries's, and there captain Kouder told me that I ſhould be at Marks' the next day, to go along with them to Millar's town. It was now dark, and I had not ſeen John Fries come then. He told the ſame to the reſt of the company. I then went home and went to bed. After I was home about a quarter of an hour, John Gettman and John Fries's ſon came to our houſe, but I was in bed. Gettman had a gun at my houſe, (he was a gunſmith.)

What age was young Fries ?

About fifteen or ſixteen.—I went next morning to Marks' tavern in conſequence of a meſſage they had left for me that night before with my mother. By ten o'clock we were all there.

Was John Fries there ?

Yes.

He named 13 more who were there.

Young Marks went off ſoon after ſun riſe to Millar's town to tell them we were coming. John Fries's ſon went with us, but his father's horſe got lame, and he was obliged to go back with it.

Were all theſe people armed ?

Yes, all but Marks and old Kline.—The priſoner had his ſword with him.

Court. Had any one the command of the men ?

Witness. Yes. John Fries had the command but he did not command till he got to Bethlehem, he gave no orders on the road.

Attorney. What was the ſubſtance of the converſation before you went from the tavern ?

Why, that they were going to Millar's town : I did not know that they were going to Bethlehem.

Did you hear any converſation about the intention of the march ?

Yes. That we were going to Millar's town, for ſhould there be priſoners there, Marks ſaid that he wanted us to ſhow ourſelves.

What were you to ſhow yourſelves for ?

I do not know what for.

Were you to aſſiſt to bring the priſoners down to Philadelphia ?

I do not know.

What was the intention of the Northampton people ?

Why, they had a mind to take the priſoners again : I underſtood that the night before at Fries's and along the road before we got there. About three or four miles from old Marks', we met young Marks ; he ſaid it was not worth while to go to Millar's town, that the priſoners were up at Bethlehem, and that they had all gone there.

Who had gone there ?

The Northampton people—the light horſe. Some was then for going back again : ſome, as they had come ſo far, was for going up to Bethlehem, to ſee what was going on there, ſo we went on.

Who told you to go on ?

Old Marks and John Fries ſaid that as they were come ſo far on the road, they would go up and ſee what was doing there. Then we went on about a mile, and ſtopped at Ritters where they fed their horſes : there was a liberty pole there. Then we went on to Bethlehem. When we came to the bridge, there the people had ſtopped, there was ſome riflemen and ſome light horſe. Some aſked the reaſon why they ſtopped there : they ſaid they could not get over, the bridge was ſhut : then John Fries rode up, and aſked whether they required toll or not ; they ſaid, yes. Then he told them to count his men, and told us to follow him.

Did he ſpeak generally ?

Yes.—The words he uſed was, now boys, follow me. I do not know whether he counted all or only his own men.

Did you hear any thing at that time of thoſe men whom you found there having ſent three men to Bethlehem ?

I heard of their having taken two or three men under guard.

Who paid the toll ?

I do not know, we did not, we were all mixed together.

Did you not hear of three men being ſent forward ?

No, I did not.—I heard of their having taken ſome priſoners.

Had you heard before you come to the bridge of theſe two priſoners ?

No.

Did the whole party follow Fries over the bridge, or only the Bucks county people ?

I believe only the Bucks county people, without it was ſome few.

What became of Staeler's Riflemen ?

Why they came pretty ſoon after over the bridge.

You were all on horſeback ?

Yes.

Did not the others come over the bridge at the ſame time it was opened for you?

I did not look back; all that I can ſay, when we got up to the tavern, they were pretty cloſe after us.

What diſtance is it from Marks' to Bethlehem?

About twenty miles.

When we got over the bridge, there were two men met us, and ſaid we ſhould not hurt them: Fries told them that he ſhould hurt nobody without they hurt him firſt. Then Judge Mohollan came and ſpoke with him afterwards, but I do not know what either he, or Fries ſaid. When we got up to the tavern at Bethlehem, the whole of Staeler's rifle-company were there. They marched round the houſe twice; we did not ſtand in ranks, we were ſeparate. They wanted one to go up and talk with the marſhal, and they from Bucks and Northampton ſaid John Fries was more fit to go up than e'er a man that was there. Then John Fries and one Hoover went up ſtairs. After a while Hoover came down, Fries ſtaid up when he came down, he kept daſhing and ſwearing, and ſaid force ſhould do: give him nine or ten of the beſt riflemen in the company, and he would ſtorm the houſe; a great many of them told him he ſhould not do it, he ſaid he would, Jacob Hoover, George Mitchel and Mr. Mohollan endeavoured to keep him off.

Did this Hoover belong to Staeler's company?

I think he did.—Then Fries, when he came down ſtairs, he fetched ſome writing down with him, that he got from the marſhal, which he read to the company. He ſaid the marſhal dared not give up the priſoners, and therefore that they would take them by force of arms. At this time the Bucks county people were ſeparate from the others.

COURT. Who did Fries ſpeak to?

WITNESS. He ſpoke to the whole of them.—Then he aſked, what ſhall we do now—take them by force of arms or how? Several of them ſaid, ſince they come ſo far now they would have them. Frederick Henry ſaid ſince they were come ſo far, it was a damned ſhame not to have them. Then Fries went up ſtairs again, and ſaid he would go and talk to them once more. When he came down again, he ſaid that the marſhal dared not give them up, without they took them by force of arms. They then told him that he ſhould go and do ſomething pretty ſoon, for it was getting late. Some of them ſaid it was better to let Fries have the whole command of all the men. Then it was concluded to go into the houſe, and he ſpoke five or ſix times.

Was it agreed that Fries ſhould have the whole under his command?

I do not know. I only heard what that one man ſaid, and he thought him the fitteſt perſon.

Did Fries hear this? where was he?

He was in the yard before the door, and near enough to hear it.

You did not hear him object to taking the command?

I do not know whether he heard what that man ſaid.—Then Fries, when it was concluded to go into the houſe ſaid, For God's ſake don't fire boys, till I am fired upon firſt: he ſaid this three or four times over. Then we moved on to go in, he was before us.

COURT. How many followed him?

I do not know, but a good many at laſt. I could not ſee who they were, the houſe was ſo full. Then Fries went up and talked to the marſhal about half way up ſtairs. Henry told me that Fries was telling the marſhal that if he did not give up the priſoners, they would fire on them, ſo that they ſhould not ſee each other for ſmoke. After that, the door was opened, and I ſaw ſome of them come down.—Some came down while Fries was talking to the marſhal.

Then they were not all down ?

There was ſome not down ; they called for them, and they came down: —Fries ſaid he was glad Hoover did not go in along with him, becauſe he was too much of a fool ; he thought this would not have done ſo well as it did : he did not want him there.

Did you retire from Bethlehem altogether when you had got the priſoners ?

Yes.

Did Jarret's troop go with you ?

I ſaw ſome light horſe before us.

Did you ſee Fries go to the miniſter after he was releaſed ?

Yes, he went to him in another room : he pulled off his hat to the miniſter, and told him he muſt thank him that he had got out, he ſaid he was out, but *he could thank him for all.*

The marſhal was again called to reconcile ſome ſeeming difference in the relation of the laſt converſation Fries held with the marſhal, and of the priſoners coming down at twice.

The marſhal ſaid that the laſt converſation he held with the priſoners was at the foot of the ſtairs.—Mr. Fries declared that he would force his way up ſtairs, if I would not give them up; I told him that this would be puniſhed with the utmoſt ſeverity, but that if he was determined to reſcue the priſoners, he ſhould not go up ſtairs, but that I would go up, and order them down. Finding myſelf not in a ſituation to reſiſt his force, I went up and ordered them down.

Cross examination. Had any priſoners left the room before you went up ſtairs ?

No.

Attorney. Had you any converſation with him afterwards ?

Yes, he returned and ſaid that we had not given up Ireman, that I muſt deliver him up with the reſt: I told him they were all gone: he then went out and returning again ſaid he was there ; and went off. At that time all the priſoners went out.

Cross examination. Have you any recollection of what Thomas ſwears that Henry told him, reſpecting firing ſo that you ſhould not ſee each other for ſmoke ?

No. I cannot be particular in that ; I cannot recollect it ſo as to give evidence upon it. There were many very ſerious threats, elſe I ſhould not have given up the priſoners.

Cross examination. At any time when you were in converſation with Fries, did any of the priſoners come down ſtairs ?

No, not the Lehi priſoners : there might be others that would not ſubmit, but none from the room in actual cuſtody, not to my knowlege : if they did, it muſt have been while I was ſpeaking to them in the croud, it was poſſible for them to do it at that time.

Were they not guarded?

They were in the room, and that guard remained there till I went up; it was placed there to prevent any perſon going up or down.

Croſs examination. After this converſation with Fries, you went up ſtairs to order the priſoners down. Were they all there in the room at that time?

I believe ſo, but I did not count them.

Well, upon your order did they come down; and did you come down with them.

Yes, I came down with them.

ATTORNEY. When the priſoners came down ſtairs and you with them, do you recollect having a ſhort converſation with Fries at the ſide of the ſtairs?

Yes, but there was but a very ſhort one.

Croſs examination. Did you lead, or follow the priſoners in coming down ſtairs?

I am not certain, but I believe I followed them.

GEORGE MITCHEL ſworn.

ATTORNEY. Where do you live?

I keep tavern in lower Milford townſhip, Bucks county.

Inform the court whether there was any oppoſition to the houſe tax law in your townſhip.

There was great diſturbance and diſcontents reſpecting this houſe law; it happened that there was a meeting advertiſed for the 8th of February, at the houſe of John Kline, to conſult about the houſe tax law.

Were any names ſigned to the advertiſement.

None that I recollect.—A number of the inhabitants met, it was pretty late in the day: they all ſeemed diſcontented, but they were in doubt whether it had paſſed into a law or not. There was ſomething in the news paper of an amendment, which made them doubt whether it was in force. They formed an inſtrument of writing, but I cannot recollect the particulars of it. It was drawn up by John Fries; I aſſiſted him. We paſſed home after that. I had no particular converſation with any body after the paper was ſigned: it was ſigned by about 50 or 52 of the inhabitants.

Do you recollect whether captain Kuyder was directed to give any notice by that meeting?

I do recollect ſomething; I think it was that captain Kuyder ſhould give notice to the aſſeſſors not to come forward till they had informed themſelves farther, whether it was a law or not.

Croſe examination. Who put up the notice of this meeting?

WITNESS. I am not ſure: perhaps it was myſelf. John Hoover, and ſeveral, had talked about it, and we thought we would call a meeting.

Was Fries preſent when you agreed to call this meeting?

No.—This was on Friday: on the Monday following James Chapman came to my houſe, and told me I ſhould tell Jacob Hoover that he ſhould give notice over the creek (I live nearly at the end of the townſhip) that if they would chooſe an aſſeſſor of their own, they ſhould be welcome; and any man that was capable of the buſineſs would be admited into the office. There was one Valentine Hoover came to my houſe that ſame day, he lives over the other ſide, and I told him what Mr. Chapman had

told me, likewiſe, I informed Jacob Hoover that day myſelf. Who oppoſed it I dont know, but it was reported that it was not adopted. Squire Foulke ſent me word to advertiſe a meeting. Iſrael Roberts and Samuel Clark called on me and told me. They informed me that Mr. Foulke was of opinion that the people were ignorant of the law, and he would read it for them, and explain it to them: this was the purpoſe of the meeting. So we advertiſed the meeting to be held at my houſe.

What time was this?

Sometime in February toward the latter end. It was on a Saturday, and there were a great many of the inhabitants at the meeting, ſquire Foulke and Mr. Chapman attended it. The people behaved very diſorderly; but I cannot recollect any of the converſation that paſſed. Jacob Kline came in and aſked me what the meeting was intended for. I told him that I underſtood by ſquire Foulke, that the Germans were very ignorant of the law; and that he called them together, to read, and explain it to them; I deſired him to try to pacify the people, and I believe he did his endeavour, but it proved in vain: at leaſt they did not read the law. I did not underſtand that any body offered to read it, he thought it was in vain, there was ſuch a clamour.

Did they ſay any thing to you?

After Mr. Chapman was gone, Marks aſked me how I came to meddle with the advertiſement.

Was John Fries at the meeting?

No.—I don't recollect any thing afterwards till the aſſeſſors came, which was the 5th of March. They took the rates of my houſe and my neighbours.

Who were the aſſeſſors?

Mr. Childs, Mr. Foulke, and Mr. Rodrick.—I went from home the reſt of the day, and the next morning when I returned (ſixth of March) I heard there had been an uproar about driving away the aſſeſſors. It was talked of that they were going to Millars town the next day. Hearing of ſuch an uproar, I thought I had buſineſs at Millars town. ſo I concluded to go and hear what was going on: they talked they were going to meet the Northampions who were going for the relief of the Priſoners.

Did you know the names of any of the priſoners?

No.—So we came at Marks's; (7th of March) when we came there, there was a talk at Marks's houſe about going to the tavern above Emaus: Marks ſaid his ſon would bring word. We went on then till we met young Marks, and he beckoned that we ſhould halt, or go back, ſo we did; he ſaid he had been up at Ritter's tavern, and they had ſtarted before he came there.

Who went with you?

He mentioned eighteen names.

Who were the commanders?

I do not know of any in particular who took the command.—Some wiſhed to go to ſee Bethlehem, ſome to ſee the bridge, ſo they concluded to go on.

COURT. Did you hear John Fries ſay any think about going on?

I cannot ſay who were for going on, and who were not. We were overtaken by ſeveral people going to Bethlehem on the road.

COURT. Were they armed or not?

None that I can recollect.—When we got to the bridge at Bethlehem, there were a great many armed men, and light horſe, and two rode over the bridge towards us, from the other ſide. I did not hear the converſation that paſſed at the bridge; but after a while we went over to Bethlehem.

After you got to Bethlehem, what did you obſerve, reſpecting Fries?

There was a great many of the company that was formed before the houſe, who ſeem to ſpeak out that they would have the priſoners. Fries went in, I ſaw him ſtart to go in, but I did not hear who ordered him, or who deſired him. A ſhort time after, in the courſe of five or ten minutes, Henry Hoover came out to us, and ſaid he was ſergeant of their company, and he was choſen to demand the priſoners. He ſaid he went up ſtairs, and ſomebody gave him a puſh, and had like to have tumbled him down ſtairs, and he came out in a great paſſion. He went on in a great rage, and I catched hold of him: he ſaid if they would only give him ten men, he would ſtorm the houſe. A ſhort time after that, I obſerved Fries come out, and he ſaid "ſilence" to the people there. He ſeemed to be as much among Staeler's company as among ours. He then afterwards ſaid, "Gentlemen, an officer of the United States ſays he cannot deliver up the priſoners, unleſs they are reſcued by force of arms: ſo, he ſaid, if you are willing, we will, I will go foremoſt, but if we do, I beg of you, none of you fire till they fire on us firſt, till I give the word, and if I drop, then you muſt take your own command." He repeated theſe words, at leaſt, once more. I heard nothing afterwards of the proceedings in, nor out of the houſe, that I recollect.

Was there ſome time after this, a meeting held at Marks's?

Yes.

After the proclamation?

A meeting was held on the 18th of March.

What was the object of the meeting?

To chooſe a committee of the three counties of Northampton, Bucks and Montgomery.

Why theſe three counties?

Becauſe there were none elſe in the proclamation.

What was the meeting held for?

To conſult what was beſt to be done, and it was determined to leave it to the committee.

Was John Fries there?

Yes.

Did you put any queſtion to him relative to the affair at Bethlehem?

No. After the meeting I had ſome converſation with him: while the committee was ſitting I ſaid to him: John Fries, you never intended to reſiſt the law, did you? He made me anſwer, yes, I did.

What laws were you talking about?

We did not in particular mention any laws.

Was there a meeting after this at your houſe, and what time was that?

It was on Eaſter Monday, March 25.

What was the object of that meeting?

That was to appoint an aſſeſſor. The one that was appointed was to do the buſineſs, if he pleaſed, if not, the perſon they choſe was to do it, or both together.

Was John Fries at that meeting?

At the beginning of it he was, but I do not recollect that he was at the time they gave in their votes.

Did he unite in the choice of the aſſeſſor?

Several did not wait becauſe there was no oppoſition, and they thought there was no occaſion.

Did he, or did he not expreſs himſelf as much againſt the law as ever?

He ſaid it would not ſuit him to vote now, as he had been againſt the law throughout.

Did not many of thoſe who had been oppoſed to the law before, vote for the aſſeſſor now?

Yes.

Cross examination. At the meeting at Marks's, was it not generally agreed that there ſhould be a ſubmiſſion to the laws?

Yes.—After the buſineſs was over, they made mention of it, but I do not know that they made any report of it.

Did not Fries, with all the reſt, agree to the ſubmiſſion?

I cannot ſay.

COURT. Was there any agreement to do it?

Why, I believe the people never knew to the contrary but there would be a return made.

Cross examination. Was it not recommended to ſubmit?

Yes.

And was it not agreeable to the meeting?

Yes, I believe it was; I heard no oppoſition to it?

ATTORNEY. Was not the return made in writing?

Yes.

Did not 'ſquire Richards propoſe that there ſhould be a ſubmiſſion ſigned there?

No, I do not recollect any ſuch thing.

Cross examination. Was it a general deſign of the meeting to conform and ſubmit to the laws?

On the 15th of March we received the proclamation, and that evening I took it down to Frederick Henny's; William Thomas went with me: I read the proclamation to Frederick Henny, and he was agreed to ſubmit; he made no oppoſition.

Cross examination. When Fries ſaid it would not ſuit him to vote for the aſſeſſor, did he ſay he continued in oppoſition to the law at that time?

I don't know that he did, but he ſeemed rather oppoſed, at that time, to the laws or the appointment of an aſſeſſor.

Cross examination. Was this proclamation communicated to the meeting on the 18th of March?

Yes it was; after I had read it to Henny, I told him to take it to others. I thought it was proper to get a petition ſent to the Preſident.

JAMES CHAPMAN.

ATTORNEY. You are a principal aſſeſſor under the act for laying a direct tax are you not?

Yes, for twelve townſhips, (which he named).

How did the aſſeſſments go forward under your care?

I believe in all but lower Milford the aſſeſſments were carried into effect without oppoſition, or in a majority of the townſhips, except ſome

little threatenings. The aſſeſſor of lower Milford was taken ſick ſoon after he got his inſtructions, and ſo did not proceed. His name was Samuel Clark: I called upon him afterwards, to know whether he was able to proceed or not: he thought he ſhould be able in a few days: I had occaſion to go to Newtown, and was ſeveral days from home, but found there was nothing done reſpecting it; I found the people had had a meeting, and there appeared to be great oppoſition to the rates being taken. The day after I returned from Newtown, Clark called upon me, and told me he thought it was not ſafe to go about, from the diſpoſition of the people at that time. I told him that I would meet him the next day at George Mitchel's tavern in Milford, and meet the people to know what their complaints were. I met Clark at a houſe juſt by, and he told me he would be in at Mitchel's in a few minutes. I examined Mitchel, to know what was their complaints: Mitchel ſignified that the people were diſſatisfied that the aſſeſſor was appointed without their having a choice: for they wiſhed to chooſe for themſelves. I told Mitchel if they would chooſe a man of character, I would uſe my influence with the commiſſioner to have him appointed, and I deſired him to give notice of it to Jacob Hoover. I wrote to the commiſſioner ſtating the ſituation we were in, and told him what I had done, but he ſeemed not to be willing to indulge them with it.

COURT. Who was the commiſſioner?

WITNESS. Seth Chapman was commiſſioner for that diſtrict.—I told him it would eaſe the minds of the people if it were done. At length he conſented, but ſeemingly with reluctance. However they never choſe one.

Was it made known to the people?

I do not recollect that it was.—I met him at a meeting of the aſſeſſors, which was held at the houſe of John Rodruck. On my return home I was told, I think by 'ſquire Foulke, that the townſhip was advertiſed to meet at Mitchel's. He ſaid if I would attend there he would meet me. I got there between one and two clock. Juſt as I got to the houſe, before I went in, I ſaw ten or twelve people coming from towards Hoover's mill, about half of them were armed, and the others with ſticks. I went into the houſe, and twenty or thirty were there. I ſat talking with ſome of my acquaintance that were well diſpoſed to the law. Conrad Marks talked a great deal in German, how oppreſſive it was, and much in oppoſition to it, ſeeming to be much enraged. His ſon, and thoſe who came with him ſeemed to be very noiſy and rude; they talked all in German, which as I did not know ſufficiently, I paid but little attention to them. They were making a great noiſe; huzzaing for liberty, and democracy, damning the tories, and the like. I let them go on, as I ſaw no diſpoſition in the people to do any thing toward forwarding the buſineſs. Between four and five I got up to go out; as I paſſed through the croud towards the bar, they puſhed one another againſt me.

Was there any offer made to explain the law to them?

No, none while I ſtaid; they did not ſeem diſpoſed to hear it.

Croſs examination. You did not ſay a word to them about it?

No, I did not. They did not mention my name the whole time of my being there, but they abuſed Eyerly and Balliott, and ſaid how they had cheated the public, and what villains they were. I underſtood it was reſpecting collecting the revenue, but I did not underſtand near

all they said. I recollect Conrad Marks said that Congress had no right to make such a law, and that he never would submit to have his house taxed.

Cross examination. Fries was not there, was he?

No.—They seemed to think that the collectors were all such fellows; the insinuation was that they cheated the public, and made them pay, but never paid into the treasury.—After getting through the croud to the bar, I suppose I was fifteen minutes in conversation with Mitchel: he said perhaps they were wrong, but the people were very much exasperated. Nothing very material happened, and I asked Mr. Foulke if it was not time to be going. So I got into the Sleigh and went off; soon after they set up a dreadful huzza and shout. I stopped at Jacob Fries's tavern, and waited for Mr. Foulke, who soon came: Clark, the assessor was likewise there. After talking a little more on the subject, Clark still persisted in not having any thing to do with it, for he thought it was not safe for him. We thought it was best to give the other assessors notice, as their assessments were nearly finished, to meet us at a certain day to take the rates in that township. I then wrote to the other assessors, requesting them to meet at Quaker town, on the 4th of March. Rodrick, Childs and Foulke met me there: we waited till evening, but no others came; so we agreed to meet at my house next morning at 9 o'clock. We met, and I went with them to Milford, to Samuel Clark's, but he was not at home. It was thought best for me to go to see for Clark, as he was engaged in a moving. I went to Jacob Fries's tavern to wait for him; they went to Mitchel's to take the rates. Clark soon came: he told me he could not undertake to take the rates, for that he might as well pay his fine if it cost him all he had, for they were so opposed to it at any rate, that he could not think himself safe, for at least he should receive some private injury. Finding he would not do it I said no more. John Fries was coming up just then: he told me he was very glad to see me: he told me that he understood I had been insulted in their township at one of their meetings: he was very sorry for it: he mentioned 'Squire Foulke as well as myself: had he been there, he said, it should not have been done: I turned it off by this: that there was not a person among them that spoke a word to me. I told him I thought they were very wrong in opposing the law as they did: he signified that he thought they were not, and that the rates should not be taken by the assessors. I told him that the rates certainly would be taken, and that the assessors were then in the township taking the rates. I repeated it to him, and he answered "my God!" if I was only to send that man (pointing to one standing by) to my house to let them know they were taking the rates, there would be 500 or 700 men under arms here to-morrow morning by sun rise. He told me he would not submit to the law. I told him I thought the people had more sense than to rise in arms to oppose the law in that manner: if they did, government must certainly take notice of it, and send an armed force to enforce the laws. His answer was that "if they do, we will soon try who is strongest." I told him they certainly would find themselves mistaken respecting their force, he signified he thought not: he mentioned to me the troop of horse in Montgomery county, and the people at upper and lower Milford, and something about infantry, who were ready to join. He said he was very sorry for the occasion, for if they were to rise, God

knew where it would end: the conſequences would be dreadful; I told him they would be obliged to comply: he then ſaid huzza, it *ſhall* be as it is in France, or *will* be as it is in France, or ſomething to that effect. He then left me and went off.

Croſs examination. Did Fries appear to be intoxicated?

No, not that I know. I ſcarce ever ſaw him intoxicated.—A ſhort time after he was gone, on the ſame day, the aſſeſſors came to Jacob Fries's tavern. We then ordered our dinners there, and I believe it was Childs undertook to take the rates of Jacob Fries's houſe. We had not gone out of the room after dinner, till John Fries came in, he addreſſed himſelf to 'Squire Foulke, telling him he was very ſorry to ſee him there; he was a man that he had a great regard for, but that he was oppoſed to the law himſelf. "I now warn you, ſaid he" not to go to another houſe to take the rates, if you do, you will be hurt." He did not wait for any reply, but turned himſelf about, and went off out of the room. I do not recollect any thing farther was ſaid to him. He ſeemed much irritated. The aſſeſſors concluded to proceed upon their buſineſs.

Rodruck and Foulke agreed to go together, and Childs went by himſelf: this was an agreement between themſelves.

Croſs examination. Had Mr. Clark's appointment been vacated?

There had been no meeting of the aſſeſſors ſince Mr. Clark had refuſed, complaining that he found it inconvenient to proceed with the aſſeſſment.

Was this new arrangement communicated to the board of aſſeſſors at all.

No.

The council for the priſoners doubted the legality of the appointment of Mr. Foulke, ſince the law had provided that an aſſeſſor muſt be appointed by the board of commiſſioners, and not otherwiſe.

Mr. Chapman ſaid it was eſtabliſhed at the meeting at Rodricks, which was called in order to ſee what buſineſs had been done, and then an arrangement was made that in caſe of the inability or unwillingneſs of Clark to do the buſineſs in lower Milford, it ſhould be done by the whole, and therefore it was done, without the place of Clarke being vacated.

Croſs examination. Were there any minutes of the aſſeſſors kept?

There was no more than a memorandum.

ATTORNEY. When you had this converſation with John Fries, was it in any reſpect founded on the alteration of the aſſeſſors, or was it a general declamation againſt the law?

He did not mention any thing of that at all.

Saturday May 4th.

Mr. Dallas gave notice that he ſhould expect the gentlemen engaged in the proſecution to produce the records of the aſſeſſors.

JOHN RODRICK ſworn.

ATTORNEY. Were you one of the aſſeſſors under the direct tax law, appointed for lower Milford?

Yes.

Have you your warrant?

—Produced it. Dated November 5, 1798.

I ſuppoſe you took the oaths the law directed?

Yes.

Did you act as aſſeſſor in any other part of your diſtrict previous to going to lower Milford?

Yes.—There were twelve townſhips in our diſtrict, and there were ſix aſſeſſors to ſerve them.—He named them.—We were all ſix ſworn at a meeting held at my houſe, by the commiſſioner, Seth Chapman: 'ſquire Foulke got his warrant afterwards; he was appointed, I think, in addition to Samuel Clark.—We met the commiſſioner on the 16th of February, when it appeared all the other townſhips were nearly done, except lower Milford; at that meeting all attended but Clark.—The principal aſſeſſor, James Chapman was likewiſe there. We were informed that lower Milford was not done, for Clark was afraid to go about. The commiſſioner told the principal aſſeſſor that he muſt inform the other aſſeſſors, that if any thing could be done in it, we muſt try to do it. We all agreed that we would.

Was Mr. Foulk appointed before this meeting?

Yes, and he was preſent at it.—Not long after this, we got orders from the principal aſſeſſor to meet him at Quaker town on the 4th of March, and to go the next day to get the rates at Milford. There were only three of us attended. We agreed to meet at the principal aſſeſſor's houſe the next morning, which we did, and thence we went to Clark's to have him to go with us: he was not at home, however we proceeded on, taking the rates, Mr. Childs, Mr. Foulke and myſelf. We had taken between 50 and 60 aſſeſſments when we came to the houſe of Jacob Fries.

Were the people at home when you took the rates?

All were at home, I think, except one, and there we left a notice. When we came to Jacob Fries's we met the principal aſſeſſor. After dinner, while we were ſitting at the fire, John Fries came into the room: we had a room by ourſelves. He ſaid he heard we were come to take the rates of the townſhip; we told him yes. He ſaid he would warn us not to proceed, elſe we ſhould be hurt. He ſaid he was ſorry for 'ſquire Foulke, and I believe Mr. Chapman he mentioned, for he always reſpected them very much. He ſaid he was oppoſed to the law, and he would not ſubmit to it. He then left the room. He ſeemed to be a little in a paſſion. We got on our horſes, and proceeded at taking the rates: I and Foulke went together, and Childs by himſelf to ſome who we thought were quiet people. We proceeded on till about ſunſet, when we were going to the houſe of one Singmaſter, and as we turned down a lane, out from the road, we heard ſomebody hallow to us: we ſtopped, and ſaw it was John Fries and five men more. We ſtopped, and they came walking towards us. John Fries was in the front. Fries ſaid that he had warned us not to proceed, and we would not hear, and now they were come to take us priſoners. I believe I aſked by what authority: with that he made a grapple at the bridle of my horſe; I wheeled my creature round, and he juſt catched hold of my great coat, but he could not hold. I rode off then: after I had got about two rod, I turned my creature round again; and he was a little way from the reſt. I told him I was ſurpriſed at his conduct, that he had behaved ſo. He began to damn and curſe, and walked back towards the other men: he mentioned that if he had a horſe, he would ſoon catch me.

Attorney. Was he near his own houſe then?

Witness. He was about two or three miles from it.

I rode up nearer to thoſe other men: they had ſtopped eſquire Foulke: as Fries returned back to his men, he ſaid, men, let Foulke go as we cannot get Rodrick; to morrow morning we will have him. I will have

700 men together to morrow, and I will come to your houſe, and will let you know that we are oppoſed to the law. We then went and took the aſſeſſment of Singmaſter's houſe. We had agreed before we left Jacob Fries's, that we would meet the principal aſſeſſor the next morning, to ſee what courſe we ſhould take.

Cross examination. Was Singmaſter at home?

Yes.—So we met: we ſaid then that it was not worth while to attempt any thing more, we could not proceed on. James Chapman then wrote a letter to the commiſſioner to ſtate matters. We then agreed to quit taking the rate at lower Milford at that time, as we thought we ſhould not be able to do any thing. When we were going home through Quaker town (on the 6th of March) Cephas Childs rode before us. I and 'ſquire Foulke rode together. When we came to Quaker town, Childs turned into 'ſquire Griffith's: we found a great many people armed with guns, and with uniforms, ſo I ſaid to Foulke, here is Fries, and his company. I ſaid, we wont ſtop if we can help it: I rode through them, but when I had got half through them, they hallowed to me to ſtop; a great many hallowed, and came running on both ſides the road, ſome with their clubs and muſkets to ſtrike me.

COURT. Did they ſtrike you?

WITNESS. No, they did not, I rode quickly through them.

COURT. Did they ſtrike at you?

I ſaw them running to come to ſtrike.—I had paſſed Roberts's tavern, and when I come to Zeller's tavern, there was John Fries at the porch; he hallowed to me to ſtop, for I was going to paſs by, and not to ſtop and give myſelf up: there was another man with me. They followed me to ſtop me: I ſtopped and wheeled my creature round, and aſked Fries what he wanted. They damned me, and told me I ſhould deliver myſelf up; I told him as long as he uſed ſuch language, I would not. There was order then given to fire at me.

COURT. Who gave the order?

That I cannot tell, but there was two men ſtanding cloſe together at Zeller's door, they pointed their guns: as I ſaw that, I rode off.

Cross examination. Then, as you were ſo near, you can tell whether it was Fries or not who ordered them to fire.

I did not hear him.

How far were you from the porch?

Five or ſix rod.

Were Fries and you face to face?

The other company were ſtill coming up at this time: they hallowed them to ſtop me. The laſt I heard was, they hallowed out to get horſes to purſue me, but they did not purſue me.

Cross examination. Had Fries, or the other people the gun at this time that the order was given to fire?

I cannot ſay that Fries had any thing in his hand at that time, but the others had clubs.

COURT. How far was Fries from you at that time?

I do not know: perhaps five or ſix rods. There was an old man ſtanding with him.

ATTORNEY. Have you ſeen that old man ſince?

Why, I thought I ſaw him, or ſome one like him the other day in the city. I believe I have ſeen him in the court ſince the court began.

Before you met with Fries, did you meet with any oppoſition that day in taking the rates for lower Milford?

Why they talked of giving us ſome, but ſtill they gave it in: Nobody prevented us.

Croſs examination. Who made out the liſts for the rates taken by you?

'Squire Foulke:—there were a great many Germans, ſo I enquired, and Foulke put it down.

When did you firſt know that the rates were not taken in lower Milford?

On the 15th of February.

Did you know of their being an intention of appointing Mr. Foulke before he was appointed?

I do not know.

Was Foulke appointed on account of Clark's abſence, or merely to go into that townſhip?

I underſtood he was appointed to aſſiſt Mr. Clarke: he was appointed by the commiſſioner.

CEPHAS CHILD, qualified.

Were you one one of the aſſeſſors under the act for the valuation of houſes?

Yes.

In what county?

In Bucks.—He here ſhewed his warrant, and proved his qualification, dated November 5, 1798.

At the meeting at Roderick's when we were qualified, we had our inſtructions given us by the commiſſioner: he informed us that there were ſix aſſeſſors to twelve townſhips, which we were all equally concerned in aſſeſſing, and it would be proper for us to point out which townſhips we would ſeverally take. I think this meeting was about the latter end of December. I made ſome objections, becauſe I could not talk the German language: they ſaid that could make no difference, becauſe we were at liberty to call the others to aſſiſt us. To that I aſſented, and we all agreed as to our diſtricts: Milford and Richland were aſſigned to Clark. I took Hill-town and New-Britain. I agreed reciprocally with Clark to aſſiſt him, and he me, as he could talk German, and in Hill-town there were many Germans. This was agreed in the preſence of the whole, and likewiſe Rodrick I made the ſame agreement with. I believe that this kind of arrangement was generally made by the whole, to aſſiſt each other. Accordingly Clark and myſelf fixed upon a day when I ſhould come and aſſiſt him for two days, and another time was appointed for him to aſſiſt me. I had made ſome beginning in my own diſtrict before that day came. Before we ſeparated, the aſſeſſor pitched upon an early day to make our returns of what we had done, in order to examine whether we had proceeded right or not. I went up to Clark's agreeable to appointment, and found he was not able to go on: I therefore attended to my own diſtrict.

ATTORNEY. Why was he not able to go on?

He was ſick and unable.—We met to make our returns at Rodrick's: Everhard Foulke, I think, met with us, I know nothing of his appointment. This was on the 5th day of the Bucks court (6th of February.) Not having gone through our buſineſs, we were to meet on the 16th

again. Foulke, I underſtood at the former meeting, had been appointed. When we met, enquiry being made what we had done: Foulke told James Chapman that he dared not go into the townſhip, for he underſtood that ſome threats were thrown out againſt him, and he rather wiſhed that the people would appoint ſome other perſon, themſelves, to do it. The commiſſioner did not ſeem to agree with it, but at laſt conſented that if ſuch could be done, he ſhould not materially object: finally, he conſented ſo far as to intimate to James Chapman, that if they ſhould make ſuch an offer, and appoint one, he would recommend him, if not, he ſaid we muſt go and aſſiſt in that townſhip. There were ſome propoſals made who of us ſhould go, excuſes were made, and then the commiſſioner informed us that we were all enjoined as much to aſſeſs that townſhip as our own. Upon which he told the principal aſſeſſor that if it did not go on, he was to write to us, and we were to attend to the call. I received a letter about the firſt of March, or the laſt of February from the principal aſſeſſor, that he had been to Milford, and it did not ſeem likely the aſſeſſments could go on, and I was ordered to meet the reſt in Quaker town on the 4th of March. Accordingly, Foulke the principal aſſeſſor and myſelf met there. We had word from two others that they were not able to come. We concluded to call upon Clark to go with us, and divide the townſhip ſo as to compleat it in a ſhort time. The next morning we met to begin the buſineſs, we went to Clark's but he was not at home. It was agreed then that we ſhould go on with the rates, and James Chapman was to go to Jacob Fries's to wait for Clark. The firſt houſe we went into was Daniel Wiedner's, I went in firſt, and told him I was come to take down the rates, under the revenue act of the United States: he appeared to be very angry; I reaſoned with him, telling him, if he wiſhed to read the law he might: I told him the conſequences of oppoſition, but he might have ten days to conſider of it, and give in his account if he choſe to take that time. He ſeeing me thus ſaid, "take it now ſince it muſt be done," he gave me his account accordingly, and appeared contented. He ſaid farther, "we have concluded not to take it, as we expect the act will be repealed." He meant they had concluded not to take till they knew what Congreſs would do with the law. I made reply to him that I believed that was already done, for I had ſeen a report of a committee of Congreſs, that it was inexpedient to repeal it, and it was not done.

COURT. Did he offer to read the law?

No. He made ſome remarks, but I told him it was very wrong. I cannot tell what he ſaid in particular. One thing I think was, that the aſſeſſors were to have very extravagent wages. "It does not matter," he ſaid, "you may as well give in my return." I did not get on my horſe till I got up to Mitchell's where the other two aſſeſſors were. Wiedner went out a little before me, and he was there when I came, walking about, ſeemingly very angry; I again reaſoned with him. Another objection he made was, that the houſes of high value was to pay nothing, while ſmaller ones, and of ſmall value was to pay high. I forgot to ſay that after the rates of Wiedner's land was taken he returned and ſaid he had forgot, there was another piece of land: he then ſat down with an heavy ſigh and ſaid. "They will play the devil with me; what ſhall we do." I aſked him what he meant, he made no anſwer. I told him I hoped every one would be as well convinced as he was. I took ſeveral houſes

in my way, and went to Jacob Fries's. As I was going in at the door, I met John Fries, who ſhook hand with me, told me he was glad to ſee me, and aſked me to take a drink. He came in again after we had done dinner and ſaid "I forbid you going to any other houſes in the townſhip: he then mentioned that Foulke and Chapman, or Redrick were men he much eſteemed. He ſaid if we did go to any other houſes, we ſhould be, or would be, hurt. We then proceeded to aſſeſs. Where Engliſh people lived there appeared no objection, except at one place. The people there ſaid, that if they did give in the account, there were ſome ordinary people in the neighbourhood, and they would be ſet on by them to do them an injury. That afternoon I went to David Roberts's: his wife ſeemed very anxious, and wiſhed her huſband had been there, for ſhe ſaid I ſhould not go home alive. I went afterwards when he was at home, and he ſaid he had no objection, only for his neighbours. After ſome converſation he ſaid the people there had agreed not to let the rates be taken yet: he ſaid they had already choſen an aſſeſſor in their own townſhip: I told him I wondered they did not let him go on: he ſignified that he was a perſon of an obnoxious character, and therefore they did not wiſh to accept of him. In our return home, I called at 'Squire Griffith's: as I got off my horſe, his wife told me that they were come there to take us, and that there were 40 or 50 men there, and ſhe did not know what they were about. A little girl juſt after came in and ſaid that they had hold of 'Squire Foulke's horſe by the bridle, going to take him: I went to the window, and ſaw them all round him. I did purpoſe to go out, but at their perſuaſion I ſtaid. The little girl came in again, and ſaid they had taken Mr. Foulke into Enoch Roberts's tavern. After a ſhort time Fries came over into the houſe where I was ſitting: he took me by the hand, and I roſe up; he ſaid, Mr. Childs, you muſt go with me to my men, as we walked along he ſaid "I told you yeſterday that you ſhould not go to another houſe, and if you did you would be hurt, and we are now come to take you priſoner, if we find that you will go on with the aſſeſſments." My anſwer was, we are obliged to fulfil our office, and we cannot do otherwiſe, unleſs we are prevented. I was endeavouring to inform him of the manner in which I had obtained the warrant, in hopes that I ſhould prevail upon him to go on with the buſineſs, as Roberts had propoſed, but he would not hear me. When we went into the houſe, he addreſſed himſelf to his men and me: "here are my men"—"here is one of them."

COURT. By this it appeared that he had the direction. Did he ſeem angry?

He appeared to be angry, but he did not appear to ſhow any revenge to me, or to talk angry.—I do not recollect that I knew any one in the houſe, except the tavern keeper. Some of them ſoon began to uſe rough language. A perſon then came behind me, and caught me by the collar over the ſhoulder, and ſaid, "damn you Rodrick, we have got you now, "damn you, you ſhall go to the liberty pole and dance round it;" the houſe was then crouded as full as it could croud, and they puſhed me up ſo cloſe, that I could not turn round ſometimes for a conſiderable time: the perſon who caught me, ſeemed to wiſh to keep behind me, but he ſtill kept hold of me: during this time I had ſeveral thumps, which ſeemed more with the knee than the fiſt. After ſome time he got to ſee my face: he damned me that I was not Rodrick, but that I was the other damned

ſon of a bitch that he ſaw ſitting at Rock hill, he had miſtaken me. A ſhort time after this, a perſon came up to me and ſaid " keep a good heart, and you will not be hurt." I turned, or endeavoured to turn to them and ſaid, " I am not Rodrick, nor did I ever aſſeſs in Rock hill :" he ſaid " you are a damned liar." With that there were ſtill more of them came up, and preſſed about me more, and more took hold of me. There was a good deal of talk, ſome in German, and ſome in Engliſh. I then told them that my name was Cephas Childs ; that I was not a man known in the county, but I had no doubt many of them, though they did not know my face, knew my name : by that there was ſome who knew me there as Coroner of the county ; that man then ſaid " if he is Childs, he is no better than the other." He aſked me where I aſſeſſed : I told him : a number of them aſked how they liked it where I had been. I told them ſome of them had appeared diſſatisfied in the firſt inſtance, but as I believed, every man almoſt in the townſhips where I aſſeſſed were ſatisfied, they again ſaid I was a damned liar, for the people had told them that they would join them in the ſuppreſſion of it, and my own neighbours would fight againſt me. I told them I thought I knew better than they ; that if I was well informed they would not do ſo. Then they began again at me. Then they aſked me if I had taken the oath of allegiance to the United States of America : I told them I had : they aſked me when : I told them I could not recollect the time, but I knew it was as ſoon as the law required it of me : they aſked me if I was a friend to the government of the United States ; I told them I was : they then began to damn the government, and the governor, and ſhoved me about, many of them taking their Maker's name in vain : there then was a perſon who ſpoke very good Engliſh : they damned the houſe tax and the ſtamp act, and called me a ſtampler repeatedly : they damned the alien law and ſedition law, and finally all the laws : the government and all the laws the preſent Congreſs had made. They damned the Conſtitution alſo.

What Conſtitution ?

They did not mention what Conſtitution, whether of this ſtate or of the United States. They damned the Congreſs, and damned the preſident and all the friends to government, becauſe they were all tories, for that none were friends to the preſent government except tories. They aſked me if I had been out in the laſt war : firſt I told them the law did not require me to go, and then I ſaid I was under the tuition of my parents : they ſaid they had fought for liberty, and would fight for it again. They ſaid they would not have the government, nor the Preſident, and they would not live under ſuch a damned government : " we will have Waſhington ;" others ſaid " No, we will have Jefferſon, he is a better man than Adams : huzza for Jefferſon."

Who ſaid ſo ?

All of them.—They then inſiſted on my taking an oath of allegiance to them, alledging that if I did ſo, I ſhould not be hurt. They inſiſted on it ſeveral times, till at length I had no way to wave it, and then I aſked them what their government was. One anſwered Waſhington : I ſaid I had taken an oath of allegiance to Waſhington's government already. They then ſaid Jefferſon ; we will have none of the damned ſamplers, nor the houſe tax. So they went on. They ſaid they embo-

died themſelves to oppoſe the government ; they meant to do it, and that was their deſign in coming there.

Who ſaid ſo, and what were the preciſe words ?

I do not know who ſaid it, but the words were theſe " We are determined to oppoſe the laws, and we have met to do it ; the government is laying one thing after another, and if we do not oppoſe it, they will bring us into bondage and ſlavery, or make ſlaves of us : we will have liberty." And then they mentioned the number of men that had joined them, or ſent them word that they would join them. They mentioned, ſome an hundred, ſome more, ſome leſs, that they had there would do it, beſides, they had all Northampton county to a man would join them, except ſome tories as they called them. Between Quaker town and Delaware river, I recollect they ſaid they could raiſe 10,000 men if they ſhould be wanted to oppoſe the ſedition and alien laws. I cannot be certain, but I think he ſaid (as he ſpoke in German) and fifty other damned laws. However I am not certain as to the number. They likewiſe ſaid that General Waſhington had ſent them account that he had 20,000 men all ready to aſſiſt them in this undertaking to oppoſe the laws. I begged them not to believe it, for it could not be, and ſomebody was endeavouring greatly to impoſe upon them : I thought I knew the ſituation of things better, and as for General Waſhington, I was ſure he never would undertake ſuch conduct as that.

Jury. Did they ſpeak in the German language at that time, or Engliſh ?

A great many of them ſpoke in German, but one or two of them ſpoke very good Engliſh, but they were altogether Germans. This paſſed while I was in cuſtody.

Cross examination. What do you mean ?

Witness. Why Fries took me in there and left me in cuſtody and went away.

Court. Did he order them to keep you in cuſtody ?

Not that I know of.—They ſaid Gen. Waſhington had certainly wrote to them ſo and ſo. One of them ſaid he would be damned if it was not ſo, for he had ſeen the letter from Waſhington ; or ſomething to that effect. During this time they were conſtantly puſhing me ; one would come to my back and get his knee up : they would endeavour to puſh me on the ſtove, one or two had hold of my hips and endeavoured to throw me down, others ſeemed ready to lick me, and particularly after this converſation about Waſhington. About that time Captain Fries came toward me and ſeemed very much ſurpriſed : He ſaid, Mr. Child, I underſtand ſome of my men have abuſed and inſulted you. He really did appear to be very ſerious ; he ſaid he would not allow me to be abuſed ; he appeared to be really diſtreſſed for the uſage I had received, and if I would tell him who it was, he ſaid he would make him behave himſelf. He then told me to come into the room. He ſaid he reſpected me, and did not wiſh me to be abuſed. I told him I thought it hard that he ſhould leave me amongſt a parcel of intoxicated people. I do not particularly recollect what I ſaid, but he told me he hoped I would not impute that conduct to him : I told him I was not much injured, and therefore hoped he would not think about it. He ſaid his men were civil men, and ſeemed to wonder ſuch a thing had happened. I think he then gave me ſomething to drink. He took me into a room, the fartheſt ſide of which

ſeemed to be empty. When I got in there, he demanded my papers while I had been an aſſeſſor. While he was with me no perſon inſulted me, indeed ſome of them, when he came forward into the room where I was puſhed off, out of the way. I then told him all that I had done, and reaſoned with him, but notwithſtanding that, he inſiſted on my papers; I then told him I had no papers about me relative to the aſſeſſment.

Cross examination. Who were in the room at the time the requeſt was made for the papers?

I do not recollect any body particularly, but there were a great many crouded into the room after me.—He inſiſted that I had the papers, I told him I had not got the papers, he ſaid I had, and he would have them. I told him I had no papers about me, but what related to my office of Coroner. I was going to deliver up to him my county tax papers, but he ſaid I had other papers, I ſaid I had not. He then looked on thoſe I had given him, and ſaw Hilltown at the top, then he ſaid Hoho! my boys, we have got what we wanted, and then turned about and went away. He left the pocket book, taking the papers with him. There was a conſiderable huzza made, and they moſt of them followed him out of the room. They were gone but a few minutes till they ruſhed in again as hard as they could ruſh, without Fries, and ſome got hold of me. They brought Daniel Weidner along with them: ſome had piſtols, guns, clubs, &c. and ſome ſwords. They ſeemed very angry, and were puſhing upon me, while ſome endeavoured to put them off. Wiedner came up to me, and inſiſted on the return of the rate I took of him yeſterday, he ſaid he would have it. I deſired him juſt to acknowledge to the truth, Did not he give it me freely yeſterday: this while a perſon had hold of me, ſome of them ſtepped up and ſaid it was fair. I then aſked him, did I not ſay I would not take the meaſure of your houſe by force, but you gave me the rates with a free will? Yes, he ſaid, but I was not forced, and therefore I want it again. Some of them then went out, and directly others came in and ſhook me very hard: one came in and threatened me, and ſaid I ſhould be ſhot; ſome brought in their guns and ſhewed them to me, and told me if I ſhould be ſeen in Milford townſhip on the buſineſs, I ſhould be ſhot. Weider went off. This perſon with the ſword threatened a good deal.

ATTORNEY. Who was he?

He was called Marks, the elder. I believe him to be the ſame man I have ſeen here.—While I was in this converſation, William Thomas came forward and ſaid he knew me, and that they ſhould not abuſe me. That gave me an opportunity of talking farther, and then I reaſoned with them of the bad tendency of ſuch conduct, and told them that I really thought if I had the law with me, I ſhould perſuade them to allow of it. One of them who had abuſed me before, came to me and acknowledged he had abuſed me, and was ſorry for it, and wiſhed me to forgive him. I think his name was Smith, but I am not ſure. After paſſing ſome time in converſation, Fries came back again with the tranſcript, and delivered it me, and told me as near as I can recollect in theſe words; I muſt go home, and muſt never come back again to aſſeſs, or I ſhould be ſhot, and inſiſted on my promiſing I would not do it. My reply was, that from the pains I had taken, I had left the townſhip with a view of not returning to it, unleſs compelled by authority, and from their preſent treatment, if they ever catched me going back without that authority, I would

give them leave to ſhoot me. He then told me, Foulke and you may inform the government what has been done as ſoon as you pleaſe, we can raiſe 1000 men in one day, and we will not ſubmit to it.

Did they ſay they were oppoſed to all the laws?

They ſaid there were a number of laws they were oppoſed to, and one of thoſe laws was now putting in execution, and they appeared to think if that was ſtopped, the others would be. This was how I underſtood it. The words were that they were determined to oppoſe the laws, and not let them be put into execution; there were ſo many laws coming on, it was time to ſtop them, and if they were known to oppoſe them, they expected the others would not be brought forwards.

Croſs examination. Was Fries preſent when theſe words were uſed?

No.

Monday, May 6.

JUDGE PETERS (one of the Bench) *ſworn.*

ATTORNEY. Will your honour pleaſe to give the Jury an account of the circumſtances of your iſſuing warrants in Northampton county, and of circumſtances within your knowledge previous to the examination of John Fries on the 6th of April.

WITNESS. The firſt time I heard officially of this uneaſineſs in the counties of Bucks, Northampton and Montgomery, was ſometime in February, I cannot preciſely recollect what time. I had heard of it before as a piece of news, but this was the firſt time I heard it officially: it was by depoſitions being ſent to me by the attorney of the diſtrict (Mr. Sitgreaves) relative to a number of perſons. After that I examined ſome witneſſes relative to it, and upon the whole I concluded to iſſue my warrants againſt the parties charged. Being much engaged in the diſtrict court, the attorney of the diſtrict drew up the form of the warrants for my ſignature and approbation. We had concluded, by way of eaſe to the people, that theſe warrants ſhould be drawn up in a form of order for the defendant to appear before ſome juſtice of the peace, or judge of the county in order to give bail for their appearance at the circuit court of the United States. Neither of us then knew of thoſe inſurgents, as it turned out afterwards to have got to ſuch a head. But I doubted myſelf of the propriety of the form and ſubſtance of the warrants, becauſe I thought that the juſtice, or judge before whom bail was taken, ought to be acquainted with the whole caſe, and ought to have the proof of the fact before him, on which the proof of the warrant was found. I had ſome doubt too, whether it was legally right for perſons taken by my warrants to go before an inferior magiſtrate. For though a juſtice of the peace of any ſtate has a right by the laws of the United States to take cognizance in the firſt inſtance of crimes againſt the United States, and bind over the offenders to the proper court, yet I did not think that, as ſuch juſtice had not had the original cognizance of the matter, there would be a propriety in my ordering him to take ſecondary notice of it. While I was heſitating on this point, I received information of the length to which, at that time, this oppoſition to the law had arrived. I doubted very much, and this thought was afterwards clearly confirmed to me, whether the magiſtrates of thoſe counties, and particularly Northampton, would chooſe to take cognizance of ſuch offences, or would chooſe to do any buſineſs concerning them. There were two of

the magiſtrates, one of them a juſtice of the peace, the other a ſtate judge, who had done themſelves much honour in perſevering ſo far as they did, in endeavouring to bring thoſe criminals to juſtice. But finally it turned out that they were obliged to abandon even every endeavour towards executing this buſineſs. So that the law, and the public authority, ſo far failed as it reſpected that county, that the judicial authority of the United States became entirely proſtrate. I found that ſome of the very perſons who were charged before me were magiſtrates, and I wiſh I could ſay that they were the only magiſtrates who were engaged in this buſineſs. Theſe were the reaſons that induced me to alter the form of my warrants. I found that too many magiſtrates were concerned in flattering the prejudices of the people, and engaging in ſeditious practices, and encouraging the people in their miſtakes for me to truſt them, and I finally found that there were but two magiſtrates that could be depended upon, and they told me that they were inſulted in the performance of their duty for the United States: of this I had good evidence. And farther: it arrived to ſuch a pitch that I could not get one of theſe gentlemen even to iſſue a ſubpœna to examine witneſſes, and ſave them the great trouble and expence of coming before me. This was the opinion of thoſe two gentlemen; one of them wrote me, and the other informed me, that they were afraid to perform ſuch an act. They could not only not get perſons to ſerve the proceſs, but they could not get the witneſſes to appear before them. This I do not bring as a charge againſt any particular perſon, but as a reaſon why the warrants were thus iſſued. Another reaſon was that thoſe people had taken up the fallacious notion that they would not appear before me, and therefore I thought it beſt, though this ſhould not have been my leading motive, to convince them that every perſon in this diſtrict ought to obey a warrant iſſued by me, and appear at ſuch time and place as I directed; the whole diſtrict being to be conſidered the ſame as a county in reſpect to a ſtate.

The witneſs then produced the warrants, dated February 20, 1799. One of which was read.

The marſhal wrote to me official ſtatements at ſundry times of the difficulties he met with, and at one time informed me that the priſoners had been reſcued, by force of arms, from his poſſeſſion. The account he gave me it is unneceſſary to ſtate, being much ſimilar to what has been given in evidence: He took ſome engagement from thoſe priſoners, particularly thoſe of Lehi townſhip, that they would appear before me, which, the priſoners themſelves told me, was chearfully given. I underſtood from them, and other channels, that they ſeveral times attempted to come down before me and deliver themſelves up, but they were prevented by perſons who interrupted them, and would not let them come.

ATTORNEY. Was John Fries brought before you after you got up there?

Yes: I had previouſly iſſued my warrant againſt him.

Was this the examination he ſigned in your preſence? [Showing the witneſs Fries's confeſſion] which was as follows:

The examination of John Fries—6th April 1799.

The examinant confeſſes that he was on the party which reſcued the priſoners from the marſhal at Bethlehem: that he was alſo one of a party that took from the aſſeſſors at Quaker town, their papers, and forewarned

them againſt the execution of their duty in making the aſſeſſments. The papers were delivered with the conſent of the aſſeſſors, but without force; perhaps under the awe and terror of the numbers who demanded them, and were by this examined and delivered to the aſſeſſors. He confeſſes that at the houſe of Jacob Fries, a paper was written on the evening preceding the reſcue of the priſoners at Bethlehem, containing an aſſociation agreement of the ſubſcribers to march for the purpoſe of making that reſcue, but he is not certain whether he wrote that paper: He knows he did not ſign it, but it was ſubſcribed by many perſons, and delivered to the examinant:—He does not know where that paper is—The examinant confeſſes alſo, that ſome weeks ago, he wrote (before the aſſeſſors came into that townſhip) an agreement which he, with others ſigned, purporting that, if an aſſeſſment muſt be made, they would not agree to have it done by a perſon who did not reſide in the townſhip, but that they would chooſe their own aſſeſſor within their townſhip—A meeting has been held in the townſhip ſince the affair at Bethlehem, for the purpoſe of making ſuch a choice: the examinant went to the place of election, but left it before the election opened.—The examinant further acknowledges that his motive in going to Bethlehem to reſcue the priſoners was not from perſonal attachment, or regard to any of the perſons who had been arreſted, but proceeded from a general averſion to the law, and an intention to impede and prevent its execution. He thought that the acts for the aſſeſſment and collection of a direct tax did not impoſe the quota equally upon the citizens, and therefore was wrong. He cannot ſay who originally projected the reſcue of the priſoners, or aſſembled the people for the purpoſe—The townſhip ſeemed to be all of one mind; a man unknown to the examinant came to Quaker town, and ſaid the people ſhould meet at Conrad Marks's to go to Millar's town. The examinant ſays that on the march of the people to Bethlehem, he was aſked to take the lead, and did ride on before the people until they arrived at Bethlehem—The examinant had no arms, and took no command, except that he deſired the people not to fire until he ſhould give them orders, for he was afraid, as they were ſo much enraged, that there would be blood ſhed.—He begged them for God's ſake not to fire, unleſs they had orders from him, or unleſs he ſhould be ſhot down, and then they might take their own command.—That he returned the papers of the aſſeſſors which had been delivered into his hands, back to the aſſeſſors privately, at which the people were much enraged, and ſuſpected him (Fries) of having turned from them, and threatened to ſhoot him, between the houſe of Jacob Fries and Quaker town.

JOHN FRIES.

Taken 6th April, 1799,
before RICHARD PETERS.

WITNESS. It is my conſtant practice to tell a priſoner that he is not bound to be evidence againſt himſelf: I did not make any promiſe or threats to extort it from him, but he choſe to make a voluntary confeſſion, which if they do not chooſe to do, I commit them without it. I am particularly delicate on this ſubject of confeſſion, and I do not like to encourage it.

JUDGE IREDELL. The gentlemen of the jury will obſerve that the law requires a judge to examine a priſoner, and it is left quite at the option of the man to confeſs or not.

The council for the priſoner hoped, as it was a caſe of treaſon, upon which the law and conſtitution was extremely cautious how evidence was admitted, the jury would conſider that proof of the overt act muſt be given by two witneſſes independent of any confeſſion the priſoner might make.

WITNESS. The priſoner appeared to me to be not at all diſinclined: his manner was that of a man not having done any thing wrong, but perfectly collected, and poſſeſſed of his faculties. It was read to him afterwards, to which he accorded, and, thinking a part not fully enough explained, added the latter part.—I have now brought it to my recollection that there were three magiſtrates in that county, inſtead of two, to whom we were peculiarly indebted for aſſiſtance.

Cross examination. Were any others applied to beſides thoſe three?

Some were, but we found much diſinclination to do the buſineſs, and herefore thought it quite unneceſſary to apply farther.

JUDGE HENRY, again called.

He was aſked his ſituation, and the particulars of the oppoſition being ſuch as either to diſable, or affright the magiſtrate from their duty.

He depoſed that he was an aſſociate judge of the common pleas for the ſtate. He iſſued a number of ſubpœneas about the 15th of January to make ſome enquiries reſpecting the oppoſition to the tax law: theſe were iſſued at the inſtance of Mr. Eyerly, one of the commiſſioners, as he and others could not proceed in the execution of their duty and particularly in Lehi townſhip. The witneſſes generally appeared much afraid at opening themſelves: and he could ſay that among the people, there were many much oppoſed to the law. I agreed to meet a number of perſons at Trexler's, commonly known as Trexler's town: there captain Jarrett appeared with a part of his company of light horſe. Shortly after the arrival of Mr. Eyerly, Mr. Balliott and myſelf, the people ſeemed to be walking about, and looking in at the window, and ſeemed to make game at us, and mouths: I obſerved Henry Shiffert in particular;—they were moſtly in uniform.

ATTORNEY. Was it muſter day?

No: I underſtood it was the general converſation there that Jarrett meant to diſplay his conſequence, and to intimidate.

Cross examination. Who did you hear this from, was it from the light horſe?

No: I believe it was from Mr. Trexler.

ATTORNEY. Did the witneſſes ſeem to be afraid?

Yes, one man in particular appeared to be in great terror: when he was called up to give his teſtimony, he cried like a child, and begged for God's ſake that we would not aſk him, for that the people would ruin him when he returned home. Indeed all the witneſſes were much agitated.

Did you or did you not diſcover a general oppoſition to the execution of this law?

Yes, I did.

COURT. Was you not apprehenſive of danger?

Yes I was from the threats which were given.

Do you imagine there were any magiſtrates in the county that went ſo far as you ?

Yes, ſeveral of them.

Cross examination. How many witneſſes did you take the examination of, at Trexler's ?

I think eight or nine.

Did they do any thing to injure you except make mouths at you ?

No, I ſent for the captain, and requeſted him to keep his men in order, for all I wanted was to examine witneſſes. There was no farther than inſult offered to us.—The captain aſſured me, he would do all that lay in his power.

Cross examination. How far is Trexler's from lower Milford in Bucks ?

Ten or twelve miles.—From Lehi to lower Milford ? Thirty.—From Hamilton to lower Milford ? Thirty one.—From Bethlehem to lower Milford ? Sixteen. Upper Milford in Northampton, and lower Milford in Bucks join each other.

JACOB STERNHER, ſworn.

Teſtimony tranſlated.

ATTORNEY. Where do you live ?

In Macungy.

Do you recollect any talk in your townſhip of the aſſeſſors coming there to meaſure houſes ?

Yes, it was ſaid that they were to meaſure them.

How long ago ?

They talked in the winter about it.

What was the talk in your neighbourhood reſpecting the conduct of Millar's town, when the aſſeſſors came there to meaſure the houſes ?

I was told that one man (inadmiſſible)

What was the general talk ?

I never went into company, and therefore I cannot ſay what it was.

When were the houſes meaſured in Macungy ?

About three weeks ago they begun to meaſure.

Do you know if any houſes were meaſured before the army went up into that country ?

Not that I know of in that townſhip.

Was you at Trexler's before judge Henry ?

Yes.

Did you hear any threats againſt judge Henry, Mr. Eyerly and Mr. Balliott by the people there ?

No, I did not.

Were there any there, who ſaid they would come to harm, if they continued meaſuring the houſes ?

No, I did not hear any.

Did you hear any of the people ſay, while thoſe gentlemen were there, that the aſſeſſors ſhould not come to meaſure their houſes ?

Yes, I heard ſome people ſay that they were not willing to have their houſes meaſured *yet*, and they willied it to be told to thoſe gentlemen.

Was you not deſired by the people in Millar's town to inform the aſſeſſors that they ſhould not come into that townſhip to make the aſſeſſment, or he would be hurt, or meet with an accident ?

Yes, a man told me to tell the aſſeſſor ſo.

Did the perſon ſay any thing about piſtols and a ſword?

Yes, he deſired me to tell the aſſeſſor that there was a man there who had piſtols and a ſword.

Who did he ſay the man was?

He did not mention who.

Mr. CHAPMAN and Mr. CHILDS were called again at the ſuggeſtion of Mr. Dallas to be aſked how the meaſurement of a houſe was taken?

It was always in every inſtance given by the owner, we never meaſured any houſes. Size, length and breadth was told us, or the proprietor had ten days to ſend it in; we left a note for thoſe people that were not at home.

Did the people who were at home in Milford mention the dimenſions of their houſes?

Yes.

Mr. Chapman proved the letter which was mentioned in his evidence to have been written by him to the commiſſioner.

Mr. Sitgreaves produced and read the warrants under which thoſe perſons at Bethlehem were held: alſo the commiſſion from the Preſident of the United States, appointing one of the commiſſioners under that act.

Mr. EYERLY again called.

Cross examination. How far did Fox live from lower Milford?

In lower Sochon townſhip; about ten miles.

How were the principal and aſſiſtant aſſeſſors appointed?

At the time I received the notice from the firſt commiſſioner that was appointed in the commiſſion, the commiſſioners were to meet at Reading on the 22d of October. After a board were met, every commiſſioner was deſired to make a plan of his diviſion, and to divide it into ſuch a ſuitable number of aſſeſſment diſtricts, as to have the law executed in a reaſonable time: at the ſame time each commiſſioner was requeſted to make out liſts of perſons qualified for the office of aſſeſſors in each diviſion. As ſoon as this was done, as the law gives a power to the Secretary of the Treaſury to reduce the number of aſſeſſors if too large, the clerk made out a liſt, and ſent it to the Secretary of the Treaſury; a liſt was alſo entered in the Commiſſioners book. Some few alterations were made in ſome diſtricts afterwards, but at the time the board was ſitting. After this was done, the form of the warrant was agreed upon by the Commiſſioners, and ordered to be printed. They were then filled up, and every warrant ſigned by all the Commiſſioners. A rule was then adopted to call all the aſſeſſors together in each diſtrict, and the Commiſſioners was to meet and qualify them and give them inſtructions.

Mr. DALLAS. I preſume a record was kept, where is it.

I do not know; it was left in poſſeſſion of the clerk, he lives at Reading.

After the proclamation was iſſued by the Preſident, was there not a meeting of the Commiſſioners with the aſſeſſors in ſome townſhips?

I do not know.

Has there, to your knowledge, been any reſiſtance to the operation of the law ſince the iſſuing of the proclamation?

I do not know of any—I was in Philadelphia.

ATTORNEY. Was the country in a pacific ſtate, except where the army marched.

No.—After the Preſident had iſſued his proclamation I wrote up to the principal aſſeſſor in Northampton county, and to Mr. Balliot, to requeſt

them to go on, and have their returns made in a certain time, and to give notice to all the other aſſeſſors ſo to do. I received anſwer an from Mr. Balliott that he had received information that it was impoſſible to do the buſineſs in the execution of the law.

ATTORNEY. Did you endeavour to get the buſineſs executed?

Yes.

Did you ſucceed?

No.

Did you attribute it to the neglect of the aſſeſſors?

No.

To JUDGE PETERS.

ATTORNEY. Did you not diſcover manifeſt ſigns of terror coming from the diſtricts where the army had not marched?

WITNESS. Yes, in many inſtances, ſome very ſtrong, it was even attempted to raiſe troops to oppoſe the army if they went up. There were one or two inſtances of teſtimony given to me that troops were endeavoured to be raiſed, and nothing, I believe, but the rapidity of the progreſs of the troops prevented its execution. I did believe that unleſs the army had gone through the whole country, there would have been the moſt atrocious inſtances of violence.

Did not ſome of the witneſſes give their teſtimony under great reluctance, owing to fear?

Yes, I had, in ſome inſtances, to ſtate the protection of the United States, and their determination to lay hold of perſons who ſhould threaten, in order to ſtimulate them: ſome ſaid, after they had given their teſtimony, that they were afraid to go home. I can really ſay, that, in general, they were the moſt unwilling witneſſes I had ever examined. I got evidence that ſome of them were forming aſſociations for actually oppoſing the troops. One man was even afraid becauſe I was in his houſe, aſking for ſome refreſhment, as, he ſaid, he ſhould be ſuſpected for harbouring me; however, after I had expreſſed my own ſecurity, he ſeemed ſatisfied.

Mr. Dallas gave notice that, though they wiſhed to give as little trouble on the part of the defendant as poſſible, yet he ſhould produce two or three witneſſes in order to ſhew that this indiſpoſition, which was manifeſted to permit the aſſeſſment, was owing to the uncertainty thoſe people were in, of the real exiſtence of the law, and that the priſoner himſelf had declared that it was no law, and that they had no idea of oppoſing Congreſs by force of arms, but that they wiſhed for time, in order to aſcertain its real exiſtence, and if the law was actually in force, that they wiſhed, agreeable to their former cuſtom, to appoint aſſeſſors from their own reſpective townſhips: alſo we mean to ſhow that Fries was perfectly acquieſcent after the proclamation, and that Mitchel was entirely miſtaken as to the expreſſions ſaid to be uſed by Fries at the meeting at Conrad Marks's. However, as we wiſh to have time previouſly to examine the witneſſes we mean to bring, we ſhall not be able to produce them at this ſtage of the trial.

Mr. RAWLE, then opened the conſtitutional definition of treaſon, as conſiſting of only two parts: "levying war againſt the United States, and aiding the enemies of the United States." As it is only the firſt of theſe ſpecies of treaſon the priſoner is charged with, it is only neceſſary to aſ-

certain what is meant by levying war againſt the United States. Mr. Sitgreaves has ſtated that, levying war againſt the United States conſiſted, not only in a broad ſenſe of rebellion openly manifeſted, with an avowed intention of ſubverting the government and conſtitution of the country, but alſo with force of arms, or by numbers ſufficient for that purpoſe, to cauſe an impreſſion of terror: theſe, either one, or all together, uſed to prevent the execution of the laws, or of any particular law of the United States from motives, not of a ſpecial but of a general nature—is treaſon. This poſition I believe is perfectly correct, and has already received the ſanction of a court of the United States, reſpecting the inſurrection in the weſtern parts of Pennſylvania. See 2 Dallas 348. Mitchel's caſe—This doctrine is laid down in terms ſhort and conciſe, and is ſuch as is founded on the particular authority of all the writers on Engliſh law.

Page 355. Bradford—attorney. The deſign of the meeting was avowedly to oppoſe the execution of the exciſe law; to overawe the government; to involve others in the guilt of the inſurrection; to prevent the puniſhment of the delinquents, &c.

Patterſon (Juſtice)—The firſt queſtion to be conſidered is, what was the general object of the inſurrection? If its object was to ſuppreſs the exciſe offices, and to prevent the execution of an act of Congreſs, by force and intimidation, the offence, in legal eſtimation, is high treaſon; it is an uſurpation of the authority of the government; it is high treaſon by levying war. Taking the teſtimony in a rational and connected point of view, this was the object. It was of a general nature, and of a national concern.

Let us attend, for a moment, to the evidence. With what view was the attack made on General Neville's houſe? Was it to gratify a ſpirit of revenge againſt him as a private citizen, as an individual? No:—as a private citizen he had been highly eſteemed and beloved; it was only by becoming a public officer, that he became obnoxious, and it was on account of his holding the exciſe office alone, that his houſe had been aſſailed, and his perſon endangered.—They were arrayed in a military manner; they affected the military forms of negociation by a flag; they pretended no perſonal hoſtility on General Neville; but they inſiſted on the ſurrender of his commiſſion. Can there be a doubt, then, that the object of the inſurrection was of a general and public nature.

Page 340. Patterſon (Juſtice) in the charge againſt Rigol.

With reſpect to the intention, there is not, unhappily, the ſlighteſt poſſibility of doubt: To ſuppreſs the office of exciſe, in the fourth Survey of this ſtate; and particularly, in the preſent inſtance, to compel the reſignation of *Wells* the exciſe officer, ſo as to render null and void, in effect, an act of *Congress*, conſtituted the apparent, the avowed object of the inſurrection. Combining theſe facts and this deſign, the crime is *high treason*.

This you will perceive, gentlemen of the Jury, is not preventing the execution of *all* the laws, or *all* the authority of the government, but of "*an* act of Congreſs." It is an uſurpation of the authority of the government, and thus it is levying war, and is *high treaſon*. Taking it in this point of view, this was the very object of the inſurgents at Northampton, and was of a public, of a general, and not of a private or ſpecial nature. In the caſe I referred to, the priſoner acted different from the priſoner at the Bar; he acted in a ſubordinate ſtation; he does not appear to be a firſt character in that treaſonable enterprize.

Gentlemen, the law thus laid down by the court upon that occasion, was derived from the English authorities to which I shall now refer you. 4. Blackstone, p. 81. defines that branch of treason of which we are now treating—" Levying war against the King (substitute here the U. States for King) is, pulling down all enclosures, meeting houses, prisons or brothels"—Although bawdy houses are illegal, yet by any individuals not authorised, taking the authority which alone is vested in the government, it is an usurpation of the authority, and the act being of a general, and not of a special nature, is *treason*. Lord Chief Justice Hale, whose name will ever be endeared by the piety, the humanity, and the sound legal learning which characterised him, has a chapter upon this subject of levying war against the King. 1. Hales pleas page 105. He says to march with colours flying, drums beating, &c. if on a matter of a public or general nature, is high treason, but if on a private quarrel or for a private purpose, it is not treason. Treason in levying war, by this definition, consists of two sorts. First, marching expressly, or directly against the King's forces: secondly, interpretatively, or obstructively; doing a thing of a general nature. Page 133. If to pull down a particular inclosure, it is only a riot, but if to pull down all inclosures, it is levying war against the King, because it is generally against the King's laws. Foster, p. 211. Insurrections in order to throw down *all* inclosures, to alter the *established law* or change religion, to inhance the price of *all* labour or to open *all* prisons—all risings in order to effect these innovations of a *public and general concern by an armed force*, *are*, in construction of law, *high treason*, within the clause of levying war. Insurrections, likewise, for the reformation of *real* or *imaginary* evils *of a public nature, and in which the insurgents have no special interest*,—risings to effect these ends by force and numbers, are, by construction of law, within the clause of levying war.

1. Hawkins, Chap. xvii. Sect. xxiii. p. 37. is much to the same effect. Douglass, 570. in the case of Lord G. Gordon. The case there on the part of the prosecution was an attempt to force the repeal of an act of Parliament, and this was called high treason, although the defendant was not convicted. Keyling p. 70. on the case of Messenger, Appletree and others, and 75, ibid.

It will probably be said by the defendant's Council that this should be simply considered as a rescuing prisoners from the custody of the Marshal, and that is not treason, and that a number of crimes of a less degree must be committed in order to make it treason, as Arson, Burglary, and Murder. But I would observe, that when these crimes are committed, one or more of them, they are not component parts of treason, but they lose their qualities and their name in the absorbing crime—*treason*. So when general Nevil's house was burnt, it was said only to amount to Arson: to that it was answered by Judge Patterson, were it not for the treasonable purpose with which this was done, it would be so, but the guilt rose to treason in the intention. Admitting it is a crime, and worthy of a punishment, the question is, whether, or not, it must be considered as one of the means made use of to obtain the end in view. 1. Hale 133. If a man break open prison, except where a person is convicted for treason, it was ruled to be only a great riot: if several were rescued thereby, it was a riot and rescue, except those persons rescued were

convicted for treason, and where it was without any particular view to the persons themselves, and where the prisoners were unknown, then the rescue becomes a part of the treasonable act, and that, with other facts constitutes the person guilty of treason. In 4 Blackstone you will find an answer to what Mr. Dallas said this morning ought to be in favour of the prisoner: to wit, an ignorance of the existence of the law.

Suppose every man who would profess himself ignorant of the existence of a law was exculpated from the observance of it, or from the consequences of breaking it, to what would that doctrine lead! It would be for the interest of every man who wished to oppose a law, to keep himself under the shelter of this want of knowledge, in order that he might sin with impunity—without knowing it. This is a mistaken fact, and an error in point of law. I make these observations, not because I suppose that the defence will be seriously set up, or that, did it exist, you would be in the least guided by it, but under the impression that when you come to examine all the facts, you will discover that it was not so.

Unless these points which I have laid down are controverted, I shall not trouble you with more points of law, and shall leave the observations I am farther to make, to a later period of the case.

Mr. DALLAS.

May it please your Honors:

GENTLEMEN OF THE JURY,

IT has become so uncommon in the state of Pennsylvania to be employed in a cause, upon the issue of which the life of a fellow creature depends; that, I am confident, the court and jury, as well as the council on both sides, are prepared to give a solemn, candid and patient attention to the present investigation. It is, gentlemen, a question of *Life* or *Death*; and if what we have heard is true, that the prisoner is a husband, and a father, it is a question whose importance extends beyond his own life, to the existence and well-being of a miserable family. If I should manifest therefore, an extraordinary solicitude to secure the attention of the jury, as long as the occasion shall require, these considerations would, I think, furnish a sufficient excuse: yet, permit me to add to my justification another remark. It is not only the life of John Fries, and the well-being of his family, that are at stake on this trial; but, we all know, that the impressions made on your minds, and communicated to the public by your verdict, may reach the lives and families of many more unhappy men now under indictments for a similar crime. I must confess, that I feel agitated by the prospect: for, if it appears so awful, so interesting, as it evidently does, to the court and audience, how must it affect us who are the council for the prisoner, charged with the developement of every principle and of every fact, that can tend to an acquital? As it relates to the Council for the prosecution, the difficulties are comparatively small. They have had an opportunity amply to explore all the facts; to calculate the effects to be produced, and to point their testimony precisely to the object of the charge. We, who are council for the prisoner, are ig-

norant of the man and of his connections. Till you were impannelled, we knew nothing of the evidence to support the profecution; and could, therefore, be little prepared to encounter and repel it. Beſides, in all our enquiries for the means of defence, as well as in our examination of the witneſſes, we have been embarraſſed by the foreign language in which the parties have ſpoken. That ſome of you, however, as well as the oppoſite council underſtand the German, has been a ſource of conſolation to us; for, it is your province to decide on the facts.

But theſe are not the only obſtacles which we have to encounter. I am ſure I ſhall not be miſunderſtood when I ſay, that the proſecution appears to be ſtrongly marked with the authority and influence of government.

It is, I grant, incumbent upon the government to exerciſe its powers for the puniſhment of crimes; but it is eſſential to a fair diſcuſſion of every accuſation, that the acts of the government ſhould not be eſtimated as proofs of the priſoner's guilt. Thus, though you find by the proclamation of the Preſident (which, doubtleſs, he thought, with a wiſe and upright intention, was required by the extraordinary circumſtances of the times) that the diſturbances in Northampton were deemed overt acts of treaſon by his adviſers; and though this denunciation was followed by the march of a conſiderable army for the expreſs purpoſe of ſubduing and apprehending the traitors; you will recollect, that you are to decide whether treaſon has been committed, from the evidence of the witneſſes, and not from the opinions of the government. Again: great inconveniencies have been experienced by many meritorious citizens, who relinquiſhed the purſuits of buſineſs, and the pleaſures of domeſtic life, to aſſiſt in the ſuppreſſion of the inſurgents; but you will not allow the irritation and reſentment proceeding from this ſource, to transfer from your judgments to your paſſions, the determination of the cauſe. Far be it from me to contend that outrages have not been committed, which are diſreputable to the ſtate or ſociety at large, and to the character of Pennſylvania in particular; or to endeavour to ſhelter from the puniſhment of the law, the inſtigators and perpetrators of ſuch offences. Every citizen is intereſted, and is bound to aſſiſt in detecting, proſecuting, and puniſhing the offenders; but every citizen, let it be remembered, is ſtill more intereſted, that even the greateſt criminals ſhould only be puniſhed in the manner and to the degree which the law preſcribes. However we may differ on ſpeculative points of politics abroad, however we may be diſpoſed to approve, or to diſapprove, the meaſures of adminiſtration, and however we may controvert or aſſiſt, the conſtitutionality, or the expediency, of particular laws, all party ſpirit, all perſonal animoſity, muſt be abandoned when we are called upon to act as miniſters of juſtice; or we ſhall, in the indulgence of a moment's vengeance, overthrow thoſe barriers which are our own ſecurity, and the pledge of ſafety to poſterity.

Whatever you may have thought, whatever you may have ſaid, whatever you may have heard, in other ſcenes, muſt now be obliterated from your minds. The character of private citizens, with all the privileges of private opinion and feeling, is here exchanged for the character of public functionaries, with all the reſtraints of law and juſtice. Your opinions as private men, will only be regarded according to their intrinſic merit; but your verdict as a jury will be forever obligatory, bearing all the authority of a precedent.

Though, then, a proclamation has iſſued, an army has marched, and popular reſentment has been excited, we claim an unbiaſſed attention; and circumſcribing your view of the ſubject to the evidence, we confidently expect a fortunate reſult. What has happened in England upon a ſimilar occaſion, we think will happen here. The Britiſh Privy Council announced a traitorous conſpiracy to the Britiſh Parliament. The Britiſh Parliament declared that the party recognized and confirmed the charge of high treaſon and thus the whole weight of public authority in that country, legiſlative and executive, inſtituted a proſecution, which was, afterwards, conducted with the greateſt zeal and talents—with ſuch zeal and talents as the preſent proſecution has diſplayed. What was the event? A jury (that ineſtimable palladium) without fear, and without favour, examined and pronounced that no treaſon had been committed. I allude to the recent caſes of Horne Tooke and Hardy.

I ſhall, I preſume, be excuſed, if I intimate to you ſome other diſadvantages under which the priſoner's caſe labours; for, it is not merely neceſſary to produce evidence, to explain, extenuate, or refute the charge; we muſt guard your minds againſt any previous bias, any latent pre-determination to convict. The accuſed gentleman, and his companions, you will recollect, are not upon their trial among perſons, with whom they have been accuſtomed to live. This is a diſadvantage, which every candid man will acknowledge. They are to be tried, likewiſe, by a jury, ſelected and returned by the marſhal, the very officer who has been perſonally inſulted, and whoſe appointment depends on the will and pleaſure of the executive magiſtrate—that magiſtrate by whom the offenders have already been deſcribed as traitors. I mean not to caſt the leaſt reflection upon the laws of Congreſs, nor upon the officers of the government; but to make a general remark on the defective ſtate of our judicial inſtitutions. The conduct of the marſhal has, indeed, been highly exemplary throughout the tranſaction; and when with ſuch powers he returned ſuch a jury as I have the honor to addreſs, he manifeſts an impartiality and independence of character, that entitles him to the reſpect and plaudits of his country. Nor is it here that the priſoner's diſadvantages terminate: but I hope, I believe, that never 'till this day was the Preſs employed in a baſe and ſanguinary attempt to intimidate the jury and council from a faithful execution of their duty in a capital caſe! Since, however, the jury have been ſummoned; nay, ſince the court have been ſitting upon this very trial, there have been the groſſeſt, the moſt inſidious practices in a public newſpaper, to warp your ſentiments, and to deprive the unfortunate priſoner of the benefit of the beſt talents, which the bar of Pennſylvania can afford. On the other hand, a gentleman, whoſe abilities we all reſpect, and whoſe long reſidence in the offending counties muſt greatly facilitate the progreſs of the proſecution, is aſſociated, without cenſure, and certainly without being anſwerable, in the duties of the attorney of the diſtrict. While our ignorance of characters, and circumſtances perplexes the defence; his accurate information and experience enable him to probe every witneſs to the quick, and forcibly to combine and interweave all the incidents of the tranſaction. But his motives are pure: for, if he does arraign; if he does convict; if he does puniſh; it is becauſe his patriotiſm and public ſpirit enable him to ſoar far beyond the little affections of a neighbourhood.

Gentlemen, in this ſituation we appear before you as advocates for the priſoner. I declare that as far as my mind is capable of being impreſſed by a ſenſe of duty, I feel a terror leſt any thing ſhould be left undone, or unſaid, which is eſſential to the cauſe: and, therefore, complicated as the diſcuſſion muſt neceſſarily be, accept, I pray you, my ſentiments under the following heads.

Firſt, I will endeavour to eſtabliſh ſuch points of law, as ſeem to me to be applicable to the facts which have been given in evidence.

Secondly, I will conſider the general ſtate of the diſcontents, and how far the reſcue at Bethlehem was connected with the previous diſturbances.

Thirdly, I will take a review of the conduct of the priſoner in particular.

I. With reſpect to the crime of treaſon, I hold the conſtitutional act in my hand by which it is defined. The gentleman who opened this proſecution, has very juſtly ſaid, that the words of the definition were borrowed from a ſtatute very much admired in the Engliſh code; but I do not think that he has very juſtly added, that, becauſe the United States have borrowed the language of the ſtatute, they have, alſo, adopted all the inferences and expoſitions of the Britiſh courts. It appears, indeed, that Lord Hale (I. Vol. p. 132) thought, that even the Engliſh courts had carried their deciſions on the ſtatute too far, and emphatically warns the judges from proceeding further in the dangerous doctrine of "conſtructive treaſons." Speaking of paſt caſes, he ſays "thoſe reſolutions being "made and ſettled, we muſt acquieſce in them, but, in my opinion, if new "caſes happen for the future, that have not an expreſs reſolution in point, "nor are expreſsly within the words of 23 Ed. 3. though they may ſeem "to have a parity of reaſon, it is the ſafeſt way, and moſt agreeable to the "wiſdom of the great act of 23 Ed. 3. firſt to conſult the parliament and "have their declaration, and to be very wary in multiplying conſtructive "and interpretative treaſon, for we know not where it will end." It ſhould be premiſed, that in that celebrated ſtatute of 25 Ed. 3. on which is founded our definition of treaſon, there was a proviſion made, that if the overt act charged, or the crime ſuppoſed to be committed, did not come, ſpecifically, within the words of the ſtatute, the judges ſhould not pronounce it high treaſon, but muſt refer it to the parliament. Hale, the great and good, applauds the proviſion; and when he ſays, that the courts have gone far enough, does not the ſtrength of his expreſſion imply, that they had gone too far?—"Be very wary in multiplying conſtructive treaſons, for we know not where it will end." Now, it is ſaid, that becauſe we have brought the words "levying war" from the Engliſh ſtatute, we, therefore, adopt all the interpretations of the Engliſh courts; but I deny the propoſition, becauſe I think it is dangerous as well to the policy of our conſtitution as to rights of individuals. In the ſame ſtatute of the 25 Ed. 3. there is another crime, called compaſſing the king's death; and levying war has been conſtrued to be an overt act of that ſpecies of treaſon. Hence the gentleman will find that there is ſome confuſion in the Engliſh books on the doctrine of levying war, conſidering it ſometimes as a ſubſtantive and independent of treaſon, and at other times conſidering it merely as evidence of a traitorous deſign againſt the life of the monarch. It is impoſſible to conceive, indeed, any thing more abſurd than conſtructive treaſon, as it has been applied to compaſſing the death of the king.

Any man who ſhould uſe a ſingle expreſſion, a looſe word, among friends, or enemies, that could be tortured, by the moſt circuitous proceſs, into any thing like a wiſh for the king's death, was termed a traitor. In Blackſtone's Commentaries, it is mentioned, that an innkeeper, ludicrouſly declared that his ſon was heir to the crown; meaning that he was heir to the tavern, which had the ſign of a crown; yet, the expreſſion was conſtrued into treaſon, and the man ſuffered as a traitor. In another inſtance, the king killed a deer belonging to one of his poor ſubjects, who upon the firſt impulſe of his reſentment, wiſhed the deer, horns and all, in the king's belly; and the man was alſo hanged as a traitor. So far will conſtruction go, and, in ſuch a manner may a man's life be endangered! If conſtructive treaſons are admitted in this country, no man will be ſafe: It may deſtroy my life; it may deſtroy your's.

In England this ſpecies of treaſon is conſidered in two lights; levying war againſt the perſon of the monarch, and levying war againſt his authority. I wiſh you to know preciſely upon what footing this diſtinction prevails in England, becauſe I ſhall aſk you preſently, what ſpecies of treaſon ought to be conſidered as adopted by the principles, as well as the terms of our conſtitution. Levying war againſt the perſon of the monarch conſiſts in any attempt to dethrone him; either with a view to change the government, or merely to ſupplant the perſon who adminiſters it. The act is unequivocal, and meets the common ſenſe of every man. But levying war againſt his authority, is ſo indefinite, that any thing and every thing may be made treaſon; the intemperance of a mob, as well as the hoſtility of an army. Independent of all technical reaſoning, then, let me aſk you, upon the ſuggeſtions of common ſenſe, whether you perceive more in the recent occurrences than a great riot; a lawleſs diſturbance of the public peace, a daring reſcue? Was there in the mind of any man, till the denunciation contained in the proclamation of the Preſident, and the march of the army, an idea that treaſon had been committed? Till then, the guilt in obſtructing the *execution* of the laws was not denominated treaſon, nor was the puniſhment expected, death!

In order, however, to examine this point of law more minutely, and to apply it to the facts, let me obſerve that from the Engliſh books (whoſe authority, however, is not implicitly admitted) two general propoſitions are to be collected:

Firſt, The *intention* muſt be to levy war.

Secondly, War muſt be *actually* levyed *againſt the government*.

When I ſay, emphatically, that the *intention* muſt be to levy war, I mean that the intention, free of all conſtructive matter, muſt be to commit that deſcription of crime, which the gentleman concerned for the proſecution calls "levying war." Without that preciſe intention, however criminal the intention may be in other reſpects, the offender cannot be guilty of treaſon. A man, or a mob, may intend to commit a crime; a man may be armed, or a mob may be arrayed, for the purpoſe; and the utmoſt force may be uſed to accompliſh it; but it is no treaſon, unleſs the intention was treaſonably to levy war: though it may be arſon; or it may be riot, &c. If the avowed object is to ſubvert the government; to drive Congreſs from its legiſlative function; to ſeize the Preſident, &c. and inſtead of the eſtabliſhed order of things to introduce anarchy, or monarchy, the act would be plainly and unequivocally within the meaning of levying war.

It is true, that the Engliſh books go further ; and conſider an attempt by force to obſtruct the execution of *all laws*, or to compel *the repeal* of a particular law, as a conſtructive treaſon within the deſcription of levying war. But the obſtruction of *all laws* is, in fact, an attempt to ſubvert the government, and to compel the repeal of a law, is a very different thing from a temporary interference with its *execution*. Conceding therefore, as far as the Engliſh authorities go, and as far ſurely, as the intereſts of our government can require, there is no precedent of a conſtructive treaſon to warrant a conviction in the preſent caſe ; the oppoſition was not directed againſt all laws ; nor was there any force employed to compel a repeal of the obnoxious Act. In *Foster* 211, as read by Mr. Rawle, you will find the reference is particularly made to the caſe of forcing the repeal of a law, or laws, &c. and not a word about oppoſition to *the execution* of a particular law. What, then were the origin and character of the late riſing of the people ? Was it not an oppoſition given to certain officers merely from a doubt of the exiſtence of the law ; or till the people had aſcertained whether other counties conformed to the aſſeſſments, or till the inhabitants of townſhips were indulged in appointing their own aſſeſſors ? Let me aſk you, whether theſe characteriſtics are within the ſcope of the law of levying war ? Remember what Hale ſays, " Do not let a parity of reaſoning allure you ; be very wary that you do not add to the catalogue of conſtructive treaſons. Judge Blackſtone too, has been quoted by Mr. Rawle (Vol 4. p. 81) where he ſpeaks of treaſon as an " attempt to *reform* religion, or the laws ;" but I intreat your attention to the diſtinction which the paſſage itſelf is calculated to eſtabliſh. Every one knows that the term *reform* the laws, means *repeal* the laws. The current of Legiſlative power is uniform. Thoſe who made, can alone annull a law, and if a reformation is produced, it muſt be by applying to the legiſlature. If the application is made with force, or menaces, the Engliſh writers declare, and we may ſafely allow that it would be an act of levying war. But where is the analogy between that caſe, and the caſe of reſiſting a ſubordinate officer, while executing his part of a particular law ?

Now gentlemen, I challenge the proſecuting council to ſay, in what part of the evidence it has appeared, that theſe inſurgents went further than to declare that the law did not pleaſe them ; that though they did not mean to compel Congreſs to repeal it, they had ſome doubts, and wiſhed to aſcertain whether it exiſted or not ; to know whether the country in general had ſubmitted to it ; to know whether General Waſhington was not diſſatisfied with it, and to ſee whether they could not get the aſſeſſor appointed by themſelves. Under theſe impreſſions many irregularities occurred, but I aſk the adverſe council to point out if they have diſcovered through the whole courſe of the buſineſs, any inſurrection exiſting, any traitorous deſign, till the meeting at Bethlehem ; or whether till that moment the people of Northampton could be ſaid to have been guilty of any crime ?

We are told that the caſe of the weſtern inſurgents in 1794, is in point ; and that the deciſions upon the trials that then took place, are precedents on the preſent occaſion ; but, with great deference, I declare that it ſeems impoſſible to bring caſes more diſſimilar into view, where violence has been committed in both. At this ſtage of the argument however, I

ſhall only remark, that whatever may have been the language of the judge, who then preſided, I am ſure the attorney of the diſtrict will be good enough to recollect, and candid enough to ſtate, that the oppoſition, though in its origin, excited againſt the exciſe law, was conducted with the avowed purpoſe of ſuppreſſing all the exciſe offices, and compelling Congreſs to repeal the act. See 2 Dallas Rep. 346.

Let us for a moment, gentlemen, trace the motives of the people, by looking at their conduct not at large, but in the lawleſs ſcene at Bethlehem. What did they do? why they reſcued the marſhal's priſoners; but the moment they had effected the reſcue, did they not diſperſe? Their whole object then was conſummated; for, I muſt preſume that they contemplated nothing farther, as I ſee them attempt nothing more; and yet the time was very favourable to accompliſh a more extenſive deſign, if it had ever been meditated. Men intending to compel, by every hoſtile means, the repeal of a law, when they had in their hands the obnoxious agents of that law (Mr. Balliott, Mr. Eyerly, the marſhal and others) would hardly have let the moment paſs without ſome effort to triumph in their advantage. It was, indeed rumoured to be their intention to diſpatch Mr. Eyerly; but where does it appear? Was he not compleatly in their power? Was he not conſtantly in their view, though he incorrectly ſays that he was conſtantly out of their view? No: I repeat that the rioters having accompliſhed the reſcue, diſperſed; and will you, under ſuch circumſtances, in a caſe of life and death, determine that they came to commit treaſon? rejecting the plain fact, and adopting a conſtructive inference? But if they proceeded no farther than I have ſtated, let us again look to the law of England, to define their crime, as diſtinguiſhed from treaſon; and you will not ceaſe to bear in mind that *you* muſt eſtabliſh the diſtinction. Hales pleas vol. 1 p. 133—4. Bacon's abridgment vol. 6. p. 513—4—5.

Foſter Sect. 2. 210 "rilings to maintain a *private* claim of right, or to deſtroy *particular* incloſures, or to break priſons, in order to releaſe *particular* perſons have not been holden to amount to levying war within the ſtatute.

Upon this principle a riſing of the weavers in London, to deſtroy all engine-looms, machines, &c. did not amount to levying of war—for the judges conſidered it merely as a matter of private quarrel between men of the ſame trade, about a particular engine, which thoſe concerned in the riot thought detrimental to them."

Now, if we ſhould be fortunate enough in the courſe of this buſineſs to ſhow that, however criminal theſe people may be, yet, that taking it altogether, their intention was only to acquire information, to ſee what really was the ſtate of the country, and to procure townſhip officers of their own appointment: if ſo, though they achieved the reſcue, we have done with the indictment for treaſon; the verdict muſt conform to the evidence, and the judgment to the verdict. That the offence is an aggravated miſdemeanour, I will not deny; but it ought to be diſtinguiſhed from Treaſon; and, I think, I ſhall ſoon evince that it never was within the view of our legiſlature to conſider it as the treaſon contemplated by the conſtitution. Give me leave, then, to aſk (and I beg, gentlemen, as this is a matter of conſtruction, that you, who are to fix the intention, will give candid attention) whether the facts prove more than the breaking open a particular priſon, in order to reſcue particular priſoners? Was not the matter of a

partial, local nature, to make a particular, and not a general reſcue, for which a particular priſon (if it may be ſo deſcribed) was violated ? And as to the previous oppoſition what was it more than a partial obſtruction of particular officers, to prevent in a particular townſhip, *the execution* of a particular law. At Kline's the people ſaid to the ex-aſſeſſors, " we will not let you come into our townſhip 'till we know whether it is a law or not ; and if we muſt be aſſeſſed, it ſhall be by aſſeſſors of our own townſhip." A gentleman in behalf of the proſecution has told us, that we are to receive as authority all the adjudications given to the term " levying war" in England : But if I can produce an authority higher than the Engliſh parliaments, or the Engliſh courts to prove that the preſent caſe ought not to be included in the deſcription of treaſon, I preſume he will not reject it becauſe it is American : I mean the authority of our own legiſlature. Before, however, I turn to the act of Congreſs, I will attract your attention, gentlemen, by one propoſition. If the legiſlature has explicitly claſſed an offence under a particular head in the penal code, it is inconſiſtent and abſurd to ſearch for it, and puniſh it under another head. For inſtance, if the legiſlature has declared that reſcuing priſoners, not under ſentence of death, ſhould be puniſhable only with fine and impriſonment, it would be inconſiſtent, by arguing, in a circle, that a reſcue with force and numbers, is a combination for the purpoſe of preventing the execution of a law, and that ſuch a combination is treaſon, by levying war. 1 Hale's pleas 151. Keyling 75. Foſter p. 200. Sect. 7.

If the offence to which I refer had been treaſon, it would not have conſiſted with the wiſdom of the legiſlature to make it a miſdemeanour: and on this ground it is, that I now aſk you to reflect, which ſpecies of levying war, the direct or the conſtructive, was within the view of the framers of our conſtitution ? Did they not intend to exclude every deſcription of conſtructive treaſon ? But to proceed ; if I can demonſtrate, that every thing which has occurred of a criminal nature, from the commencement of the buſineſs, to its conſummation, and regarding every previous diſcontent as tending to the particular reſcue at Bethlehem (which is the utmoſt the oppoſite council will pretend) has been conſidered by the legiſlature of the United States, (whoſe acts I repeat, are entitled to more reſpect than all the Britiſh authorities, parliamentary or judicial) as high miſdemeanours, and not as treaſon ; then I am entitled to inſiſt, that the conſtitutional proviſion does not embrace the caſe ; or if it does embrace the caſe that Congreſs, poſſeſſing the power to declare the puniſhment of treaſon, has limited the puniſhment of one ſpecies of the offence at leaſt, to fine and impriſonment. Liſten to the act, " If any perſon or perſons ſhall knowingly and wilfully obſtruct, reſiſt or oppoſe any officer of the United States in ſerving, or attempting to ſerve or execute any meſne, proceſs, or warrant, or any rule or order of any of the courts of the United States, or any other legal or judicial writ or proceſs whatſoever, or ſhall aſſault, beat or wound any officer, or other perſon duly authorized in ſerving or executing any writ, rule, order, proceſs or warrant aforeſaid, every perſon ſo knowingly and wilfully offending in the premiſes, ſhall, on conviction thereof, be impriſoned not exceeding twelve months, and fined not exceeding three hundred dollars." Shall it be contended then, that obſtructing the marſhal, who was employed in ſerving proceſs, conſtitutes the crime of treaſon ! If it did ſo, there was no kind of neceſſity for this law.

Is there an ingredient in the whole of the conduct, while obſtructing the marſhal in the ſervice of his proceſs, that is not embraced in this legiſlative deſcription ? But let us take another ſtep : the proceſs is executed, the priſoners are apprehended, and actually in the cuſtody of the marſhal ; and if it is treaſon, under the Conſtitution, to take them out of his cuſtody, would Congreſs be juſtifiable in treating the offence ſimply as a miſdemeanour ? And yet ſuch abſurdity is imputed to the national legiſlature, ſince in the 23d ſection of the ſame law, it is enacted, that " if any perſon, or perſons ſhall by force ſet at liberty, or reſcue any perſon, who ſhall be found guilty of treaſon, murder, or any other capital crime, or reſcue any perſon convicted of any of the ſaid crimes, going to execution, or during execution, every perſon ſo offending, and being convicted thereof, ſhall ſuffer death : and if any perſon ſhall, by force, ſet at liberty, or reſcue any perſon who before conviction ſhall ſtand committed for any of the capital offences aforeſaid ; or if any perſon or perſons ſhall by force ſet at liberty, or reſcue any perſon committed for, or convicted of any other offence againſt the United States, every perſon ſo offending ſhall, on conviction, be fined, not exceeding 500 dollars, and impriſoned not exceeding one year." Thus, if a malefactor was actually under the gallows when reſcued, the reſcue would have been but a capital offence ; and the ſame conſequence is now attempted, where the perſons reſcued had been admitted to their parole, and were in cuſtody of the officer, merely upon meſne proceſs. It was a matter of honour that made them reſign themſelves to his cuſtody, and it was, in effect, a matter of form that he kept them in cuſtody : for, we find, that as he took their parole to meet him at Bethlehem, ſo at the moment of the reſcue, he took their parole to meet him in Philadelphia, which they have all punctually done.

Here then you find, gentlemen, that we have two of the prominent features of this caſe reduced to the form of poſitive law : to wit, the obſtruction of the marſhal in the ſervice of his proceſs, and the reſcue of priſoners from his cuſtody. But there is another circumſtance to which I would wiſh, likewiſe, to lead your attention. You find there was an indiſpoſition to allow a particular claſs of officers to make the aſſeſſments ; and the people urged, that if it was to be done, it ſhould be done by their own aſſeſſors. In this important point, therefore, the particular officers, and not the law, form the object of reſentment and oppoſition. On this diſtinction, I have the reſpected authority of Mr. Bradford, the late attorney general of the United States, for aſſerting that the offence was riot, not treaſon. In his argument in the United States v. Mitchel (2 Dallas Rep. 354.) he ſtates that " an oppoſition was lately made to the appointment " of a particular judge, in Miffin county, and he was forcibly driven from " the bench. But the offence was proſecuted merely as a riot, upon this " principle of deſcrimination, that the deſign was not to prevent the go- " vernor from appointing any judge, but only to diſplace an unpopular " individual." So even if the unpopular aſſeſſors, inſtead of being forewarned not to enter the townſhip, had been forcibly expelled from it, the offence would not have been treaſon, but riot.

I am arrived, however, to the laſt and concluſive evidence of the ſenſe of Congreſs upon this ſubject : from which it will be proved that the ſame cautious, and in reſpect to puniſhment, the ſame benevolent, legiſlature, had conſidered all that the ingenuity of any gentleman can ſuggeſt as

criminal in the lawleſs career of the rioters, and defining the offence to be a miſdemeanor, excludes the idea of its being a treaſon. Let us turn to the act commonly called the ſedition act. Congreſs have there declared, that fine and impriſonment ſhould be the only puniſhments for the offence which appears on the evidence to have been committed by the priſoner. I aſk you, gentlemen, to reflect one moment upon the teſtimony that you have heard upon this trial, while I analyſe the firſt ſection of the law. Has John Fries been guilty of a combination and conſpiracy to obſtruct the execution of the laws? In this act, his puniſhment is preſcribed. Impriſonment and fine. Did he intimidate a public officer? Here is the puniſhment. Is there in the whole tranſaction any councilling, or adviſing, or any efforts towards producing an inſurrection, it is puniſhable by this law. The law contains theſe deſcriptions of offence: Firſt, combination with intent to oppoſe any meaſures of government, or to impede the operation of the laws of the United States. This offence, notwithſtanding its generality, is only puniſhable with fine and impriſonment. Secondly, an intimidation of perſons, who are applied to for the purpoſe of executing a law, ſo as to prevent their accepting the office, or having accepted it, to deter them from diſcharging the duties annexed to it. This is the offence that will be urged upon you: all the diſturbances of Northampton county; all the tittle tattle and alarms of commiſſioners and aſſeſſors, will be arrayed againſt the unfortunate priſoner to affect his life: and the aggregate will be ſwelled into the ſize, and depicted in all the malignity of treaſon, though the law ſays it is nothing more than a miſdemeanour. "Yes," you will hear it exclaimed, "Fries is the leader; he is the very life of the mob: it was he who adviſed, he who addreſſed, he who alarmed, he who intimidated, he who reſcued!" Did he ſo? Then this law will puniſh him for a high miſdemeanour; but I can diſcover no law to puniſh him for treaſon. I am ſenſible that if I err in my opinion, thoſe who proſecute will be able to diſcriminate, between the caſe proved by the evidence, and the caſe defined in the ſedition law. I have not the ingenuity to perceive it; and I hope you will only give that weight to the reſpective arguments which they reſpectively merit. Nay, I am perſuaded, that the humanity of the proſecuting council, will induce them to abſtain from any harſh expoſition of the principle, as well as from any ſtrained application of the evidence, involved in the controverſy. The law provides for combinations formed for all theſe purpoſes, whether they have been carried into effect or not, the ſimple puniſhments of fine and impriſonment. Simple do I call it! reſpecting this man, do we not know how exemplary it may be rendered. Suppoſe the judge was to impoſe a fine of 5000 dollars, can 5000 dollars come from the purſe of John Fries? And if it cannot come from his purſe, then the power of remiſſion is in the chief magiſtrate alone; and unleſs he thinks that the public will ſuſtain no injury from the convict's liberation, his ſentence of five years may be protracted to an impriſonment for life, and the total deprivation of the means by which his family can be reſcued from wretchedneſs and ruin. It is not therefore, a ſimple puniſhment. But, permit me to repeat, that every deſcription that can be given of the diſturbances in the northern counties, is to be found in the law I have referred to; and if the legiſlature, which muſt be ſuppoſed to be as wiſe, as guarded, and as well-informed, as courts, or juries, in regulating the intereſts of the community, has thought proper

thus to describe the crime, and prescribe the punishment, shall we presume to be more wise, and assume a power to be more penal? If the legislature was contented to class these actions with misdemeanours, shall the designation be expunged by this court, or arbitrarily transferred to the catalogue of constructive treasons? Shall a jury sitting here;—shall a judge sitting there;—declare that though the offence is unequivocally pointed out by law, yet in their ideas of distributive justice, the penalty ought to be enhanced, and the man ought to be hanged! In every authoritative book, in regard to criminal cases, the most liberal interpretations are given to laws which mitigate punishments. Then let us suppose that the legislature when the sedition law was passed, contemplated the crime of treason without a view to the distinction of direct and constructive treason. The crime is defined by the constitution, but the punishment is not; and, therefore, an early act of Congress, agreeably to the power vested in that body, affixed the punishment of death: but, it will not be denied, that Congress might at that time have inflicted only the punishment of fine and imprisonment, as is the case in the penal code of Pennsylvania. If, therefore, Congress has the power to modify the punishment and if we discover in the Sedition act a full description of treason, whether direct or constructive, ought we not to consider it, upon the liberal principle of expounding penal statutes, as an intended mitigation of the punishment, and a virtual repeal of the pre-existing sanctions? If there is any inconsistency in the two laws, so that they cannot stand together, the former must be presumed to be annulled by the latter, and the greater punishment is superseded by the less, because enacted subsequent to it. The word *intimidate*, used in the Sedition act, is of extensive meaning; it is not a mere feeling which would arise from saying you will suffer among your fellow citizens; it is a feeling which operates upon the mind from an apprehension of personal danger, and may be the effect of every species of force or menace. 1 Hale's pleas 3 and 6 Bacon 513. These authorities show what arraying in arms is, with a view to commit a crime; but prove that if the intention is not treasonable, it is not treason, however violent the act might be, and whatever may be the military array of the actors; and the intimidation to which the law applies, embraces every description of force that can possibly be contemplated, in order to accomplish the meditated purpose;—the obstruction of process,—the rescue of prisoners, the surrender of office;—or the resistance of a law. Foster 219 Sect. 10. "Attacking the king's forces in opposition to his authority upon a march, or at quarters, is levying war against the king. But if upon a sudden quarrel, from some affront given or taken, the neighbourhood rise and drive the forces out of their quarters, that would be a great misdemeanour, and if death should ensue, it may be felony in the assailants, but it will not be treason, because there was no intention against the King's person or government."

1 Hale's pleas 146. "If any of the King's troops be killed, it is felony." An open resistance to the justices of Oyer and Terminer in the county of Surry was felony. Here a sudden attack upon the King's troops on their march, though this must be considered as a direct attack upon the government, yet, if any quarrel arise between them and the people, it is no treason. So, in the present instance, all the object of these people was to obtain a little time to procure information. To that we attribute their

conduct toward Rodrick Childs and other officers : it arose from the impulse of the moment, and though directed against public officers, ought not to be denominated levying war against the government. The whole purpose and extent of every violent word or gesture, terminated in the intimidation of those officers. Do we hear a variety of men whispering to Eyerly he was in danger of his life ? Look at the fact : he goes the rounds with the marshal, to serve the process against the very men, who are alleged to have pronounced the threat, yet no danger attends him : he appears repeatedly at the windows at Bethlehem amidst the tumult, yet no outrage is offered : the active leaders of the mob level guns at him, yet not a trigger is drawn ! It was in short, a mere system of *intimidation*, without a design to use force, much less to commit treason. Nay, I will pledge myself in saying that there was great art used on the part of the prisoner to accommodate the matter with the officers in every stage of the transaction, and to prevent personal injury or any kind of violence. The case of the judges of Oyer and Terminer, referred to in Hale, is surely as strong as the present. Those judges were as much authorised then, as the assessors are now ; and the non-reception, or acknowledgment of both, as public functionaries was the offence.

The acts committed during this scene of tumult, ought to be punished, and I hope will be punished ; but as acts of riot and sedition, not as acts of treason.

I am sensible that it is possible to draw distinctions, to refine upon the meaning, and pervert the language of the act : but on principles of humanity, I am confident the gentlemen opposed to us will abstain from a mere exercise of ingenuity and eloquence, while we, who contend in favor of life, have a claim to every indulgence ; a right to the benefit of every shade of discrimination.

It has been laid down by the opposite council, that there must be generality of object, in order to constitute the crime of treason. If an insurrection takes place, by which it is designed to oppose all the laws, it needs no reasoning to convince any man that a subversion of the government is intended, and that this is treason : But this I contend, is the only species of treason which ought to be recognized under a republican form of government, and to which alone the language of our constitution can be fairly applied. I am justified in the position, because the legislature has asserted it. If the constitutional language may be satisfied in that manner, the diversity introduced by the legislature ought at least to be judicially respected ; so that when the legislature having provided the punishment of death for levying war, provides a different punishment for offences, which according to the English books would be construed into that very species of treason, we are bound to say that the English constructions are fallacious and that taking advantage of Lord Hale's advice, the framers of our constitution have not only rejected the past decisions (by which they were never bound as the English judges are) but have guarded against the accumulation of interpretative treason. When, therefore, I say that to oppose all laws, and to resist all the authority of the government, is a palpable levying of war, which requires no technical aid to define or explain, I go as far as the terms of the constitution necessarily demand ; and I think we are not authorised to go farther. I think I am right, also, when I say, that the legislature has distinguished the offence committed by the prisoner, from treason, and provided a different punishment for it.

Recurring to the weſtern trials, let me repeat that the direct, the avowed object of the inſurrection of 1794, was to ſuppreſs all exciſe offices, and to compel a repeal of the exciſe law; but can it be pretended that on that occaſion, or on any occaſion, a verbal menace to an officer, the reſcue of a priſoner, or a temporary reſiſtance to the execution of a law, ariſing from a doubt of its exiſtence, was declared to be treaſon? Where ſhall we ſtop gentlemen, if ſuch conſtructive treaſons are allowed? It is impoſſible for human genius, or human ſtudy to provide a barrier againſt the conſequences. The framers of our conſtitution, the legiſlature of the union, one would imagine had taken every practicable precaution againſt the admiſſion of conſtructive treaſons; but if we are to adopt the expoſitions, and the principles of expoſition, of the Engliſh courts, the wiſdom of our own country has been exerciſed in vain. If a forcible oppoſition to the partial execution of a ſingle law, by a particular ſet of officers, is treaſon as the gentlemen allege, with a parity of reaſon, it may be pronounced, that a non-compliance with any lawful requiſition of an authoriſed officer, conſtitutes the ſame crime. Open that door, and the miſchief will be carried much farther, will become more dangerous to civil liberty, and perſonal ſafety, than any thing which, the metaphyſical diſquiſitions on the crime of compaſſing the King's death, have generated in England. If any act that will interfere with carrying the laws and meaſures of government into effect, is treaſon, what a privileged order our public officers inſtantaneouſly become, what an enviable ſecurity they attain! Upon the whole diſcuſſion of this point of law, then, I conclude, that on the legitimate definition of levying war as applied to our form of government; and on the authority of the American legiſlature, no treaſon has been committed. There was no force employed againſt the government; no general object to overthrow the conſtitution and laws; no direct attempt, by arms or intimidation, to compel Congreſs to repeal the obnoxious act: but the whole was a great and unjuſtifiable riot—ſeditious in its origin; daring in its progreſs; and iniquitous in its effects.

I proceed to the conſideration of another point of law, and enquire that ſuppoſing this caſe to be treaſon, how is it to be proved? The firſt clear rule is, that the overt act muſt be proved in the county in which it is ſaid to have been committed, as on the preſent indictment in the county of Northampton. 4 Hawkins ch. 46. ſect. 184, 5, 6. p. 454. It was mentioned by Mr. Sitgreaves, that the ſpecific overt act, with which Fries is charged, was reſcuing the priſoners at Bethlehem; but this does not appear on the face of the indictment. If, however, that act was treaſon, then not only the act, but the traitorous intention, muſt be proved in the proper county, as the intention and the act, are both eſſential to the crime. Now, for a moment, overlook the general narrative of diſcontents and diſturbances, diſmiſs from your minds all the previous, and all the ſubſequent tranſactions, and confining your ideas preciſely to the affair at Bethlehem, pronounce whether there appeared at that time and place anything more than a deſign to reſcue the priſoners? It is, I aſſert, my right to call for full proof of guilt, where the indictment ſtates that the guilt was incurred. At Bethlehem, then, from the commencement to the cloſe of the tumult, who can trace an act of levying war againſt the United States? The truth is, that before John Fries came on the borders of Northampton county, the military array, of which you will hear a great

deal by and by, had taken place; and the people had got to the bridge of Bethlehem. But there is no evidence that any of the active men in oppoſing the aſſeſſors, were preſent at the bridge, at the time the reſcue was contemplated; and from the firſt convening at Schwartz's 'till the moment of their taking the priſoners, what were the views of the party, as declared to Meſſrs. Henry, Balliott, and Eyerly? Why, that they came there ſimply to reſcue the priſoners. The ſincerity of the declaration is corroborated by the powerful conſideration, that if there was a deſign to annihilate the laws, or to perſecute and injure the officers, the opportunity as I before obſerved, could never be more favourable to enſure ſucceſs. Such facts ſpeak ſtronger than the ſtrongeſt language: And is it not concluſive, that a reſcue only was in view, when we hear, that in leſs than ten minutes after the ſurrender of the priſoners, the whole multitude diſperſed, leaving the commiſſioners, aſſeſſors, juſtices and marſhal uninjured and unannoyed upon the ſpot? There is one incident, however, which, perhaps you may notice: one of the two perſons who were detained at Bethlehem in the morning, on being aſked how he came there, ſaid that he underſtood there was to be a meeting about thoſe laws, and that he came to ſee what would be done about them; but with this ſingle exception, it is obſervable that not a word was ſaid at Bethlehem reſpecting the exiſtence, execution, obſtruction or repeal of any unpopular act; not a word eſcaped but in relation to the reſcue of the priſoners. In that reſcue, the proſecuting council ſay they diſcover the generality of object, which even the Engliſh doctrine calls for in the definition of treaſon by a conſtructive levying war; and inſiſt that the particularity of object, which would extenuate and reduce the crime, is not to be found. Is it ſo contended, becauſe the demand of ſurrender, was not founded on a tie of conſanguinity? becauſe an uncle, a brother, a father, a ſon, were not impriſoned? This, ſurely, is not a legal idea of particularity. But all the law regards is to be found in the preſent caſe. The party aſſembled with a view to releaſe a particular ſet of priſoners, and not priſoners generally. Shankweiler was one who was there; three or four came with him to ſee that he ſhould not be uſed ill, and to offer bail for him. What was their language at the bridge? "They have taken our *neighbours;* but if they have done wrong, they ought to be tried in their own county." That they ſhould be tranſported to Philadelphia was the great objection—was the motive to the reſcue: that they have been tranſported to Philadelphia, is a great inconvenience, is the principal difficulty in the defence.

Thus, then, in point of proof the proſecution is defective: it is not merely an act of violence, but a traitorous intention that muſt be ſhown at the place where the violence was committed. No ſuch intention has appeared in evidence; while on the contrary we have pointed you to the parts of the evidence which prove that the people did every thing that they intended to do, and the moment they obtained their object, diſperſed. With this view of the ſubject, why does the government proſecute for a capital offence? If this priſoner is acquitted on the preſent indictment, there is no probability of his eſcaping with impunity: though his life may be ſpared; there is no doubt but the attorney of the diſtrict, will preſent a bill againſt him under the act to which I have ſo repeatedly referred.

On the principle of the law that I have ſtated, 'till the overt act is compleatly proved in Northampton, the intention as well as the deed, I

take it you cannot go to another county for evidence, by proving there an independant and ſubſtantive act of treaſon. It is immaterial to Fries, as it reſpects this charge, what he did in the county of Bucks. He met at Kline's: and though I will deny the impropriety of his conduct at that meeting, no lawyer will aſſert that it amounted to treaſon. He did not meet at Mitchel's; but wherever he did attend, we cannot perceive any thing in his conduct, but a vague diſlike of the land tax, and a ſteady regard for the ſafety of the aſſeſſors. It is immaterial what he did, and what he ſaid, in the county of Bucks: the offence muſt be proved in all its parts in the county of Northampton.

And here, gentlemen, I am naturally led to guard you againſt another inſtrument in the ſyſtem of ſtate proſecutions, called accumulative treaſon, as dangerous and as unjuſt an inſtrument as conſtructive treaſon, of which I have already ſpoken. Accumulative treaſon, is, the artful combination of a number of circumſtances, which in their original, unconnected ſituation were unimportant, but being thus combined become gigantic, and frightful to the eye. Mere indiſcretions committed at different times, in different places, and under various impulſes, collected into a maſs, and exhibited at a moment, may be made to aſſume the complexion of the moſt odious crimes. None of the acts committed out of Northampton ought to be brought into the account againſt the priſoner, till, at leaſt, the act of treaſon has been proved, legally proved, to have been committed there. For thoſe extraneous acts, if they do not amount to ſubſtantive acts of treaſon, indictable where they were committed, he may be rendered reſponſible under the ſedition law, or under the general law againſt rioters. If his actions in another county ought not to be taken into view, the reaſon is ſtronger for excluding his words. Words ſpoken may be an high miſdemeanour, but can never amount to treaſon. 4 Black Com. 259. and yet it is attempted to prove the preſent charge by the aid of looſe, equivocal, and ambiguous converſations. With reſpect to ſuch evidence, ariſing under circumſtances that are not clearly ſtated, communicated without regard to the order and connection of facts, and depending on the memory of perſons agitated by terror, or by reſentment, can it be neceſſary to caution an upright and enlightened jury? Take them, if you will, the language of the law declares that they cannot conſtitute treaſon; but the language of humanity inſtructs you totally to diſregard them.

Let me advert to another circumſtance with reſpect to the evidence. It is not neceſſary laboriouſly to diſtinguiſh what is hearſay evidence and what is not: and I admit that the teſtimony, which applies to a deſcription of the general ſtate of the country, is not to be diſregarded, becauſe it is of the nature of hearſay. Upon the detail, however, of ſpecific facts, the rule is ſtrict and beneficial. Whatever was heard from a ſecond perſon, when that perſon might himſelf have been brought as a witneſs; or whatever has paſſed in relation to the priſoner, at a time when he was abſent; the law will not allow to be the foundation of a verdict upon the preſent trial. Included in this deſcription is every piece of information, all the tittle tattle, that paſſed between the ſubordinate and principal aſſeſſors or commiſſioners. Again: the aſſeſſors told the commiſſioners that the law could not be executed; but this is matter of opinion, which muſt be founded on facts; and you muſt take the facts, not the opinion, as your guide. Nor can a correſpondence official or unofficial, between pub-

lic officers, be eſtimated as evidence on the trial of a third perſon. If it can be eſtimated as evidence, then it will be always in the power of the officers of government, to fabricate and produce evidence that will inevitably convict an obnoxious individual. God forbid that ever this ſhould be the caſe here ; but the temptations to an abuſe of power are not wanting. Without meaning a reflection upon Mr. Eyerly, it cannot be overlooked, that he, who was the commiſſioner for executing the unpopular law, had been recently an unſucceſsful candidate for Congreſs ; and if a baſe motive could actuate him, do we not perceive his opportunity, to avenge the defeat upon the active opponents of his election ? Official reports are neceſſary to maintain the connection between officers of different grades ;—the facts ſtated in them are binding upon the reporters, and the reports are themſelves ſufficient evidence to be acted upon by the officers to whom they are made : but was it ever tolerated, was it ever conceived, that an official ſtatement of facts ſhould be concluſive in any caſe, even in a caſe of property, affecting the rights of a private citizen, in a court of juſtice. The facts depend upon books and vouchers, conſtituting an official record, and the books and vouchers, or authenticated copies, or exemplifications, can alone be admitted as legal evidence upon a trial at law.

There remains another point of law, to be introduced to the notice of the court and jury. I take it for granted, that no man can be ſaid to oppoſe a law, unleſs the law exiſts ; no man can oppoſe a meaſure of government, unleſs his acquieſcence is lawfully required. The judges will not view my poſition in the miſtaken light which Mr. Attorney did, that the commiſſion of every officer from the aſſeſſor to the Preſident muſt be produced, before any act in execution of the land tax law could be performed : No, Sir ; I contend not for ſo extravagant a doctrine : but I aſſert, that every man who reſiſts a public officer de facto, and in conſequence of the reſiſtance is indicted, has a legal, ſettled right to demand upon his trial, proof of the authority of the officer. In the firſt inſtance, the party who reſiſts, does it at his peril ;—but if the perſon claiming to act as an officer, had no warrant, or commiſſion, the reſiſtance was juſtifiable, and the defendant muſt be acquitted. Let us apply this principle. The law being enacted by congreſs, it is an inconteſtable, though ſometimes harſh rule, that ignorance, ſhall be no excuſe for diſobeying it : but ſuppoſe that a man, calling himſelf an aſſeſſor ſhould come into my houſe, and inſiſt on going from room to room to take the rates, without ſhewing me his warrant ; and that in conſequence of his refuſal I ſhould turn him out, and he ſhould proſecute me ;—what is the reſult ? If he was *de jure* an officer, I am liable to the penalty of the act ; but if he was not, then I am not only innocent, but entitled to an action of treſpaſs againſt him for his intruſion.

We have, with this view of the caſe, repeatedly called for proof of the appointments of the aſſeſſors, in conformity to the act of Congreſs. Such appointments could only be legally made by a majority of the board of commiſſioners for the diviſion, at a regular meeting. Now, as the evidence proves, that one of the aſſeſſors was not ſo appointed ; and that bundles of blank warrants were left in the hands of each commiſſioner, to be filled up with any names he pleaſed ; which taſk in one inſtance a commiſſioner aſſigned to an aſſeſſor ; ſufficient is ſhewn to juſtify our exacting on a capital trial, the beſt evidence of regular appointments, that the caſe will

admit: the beſt, the only evidence, is the record of the commiſſioners, which the law directs to be kept by the clerk of the board. There can indeed, be no room to juſtify the transfer of the diſcretion and authority veſted in the commiſſioners by Congreſs: it is not like the common caſe of blank certificates, to authenticate, miniſterially, the ſignature of a magiſtrate, notary, &c. which, I as a public officer have often filled up on behalf of the Governor: but it is the caſe of a diſcretion, ariſing from the judgment, information, and integrity of the party, who is confidentially appointed to exerciſe it;—ſuch a diſcretion as is veſted in the Governor to appoint Judges, of which he could not have transferred to me, in the ſhape of blank commiſſions, without, I believe, expoſing both of us to the jeopardy of impeachment.

2. Having thus delivered my ſentiments upon the points of law, that ariſe on the evidence, I ſhall now enter upon the conſideration of the ſecond propoſition,—"the general ſtate of the diſcontents in the northern "counties; and how far the reſcue at Bethlehem was connected with "the previous diſturbances."

And here I find, gentlemen, that the ſource, from which proceeds much if not all, of our political good, diſcharges, likewiſe, much, if not all of our political evil: I mean the buſineſs of elections. You will recollect the teſtimony of Mr. Horſefield.

That gentleman, when he wiſhed to give you a deſcription of the origin of all the miſchief that we deprecate, pointed his finger emphatically, at the election of 1798. Now, I pray that I may not be miſunderſtood in the progreſs I ſhall make through the ſcene which is thus diſcloſed; let it not be ſuppoſed, that I am depraved enough to juſtify the miſconduct that has been exhibited; becauſe I am firm enough to contend, that it did not proceed from motives directed to Treaſon, nor lead to conſequences that amount to Treaſon. At the eve of our election, it is natural for the citizens of a free country, to canvaſs what has been done by the public agents; to applaud the good, and reprobate the bad: and in doing this they exerciſe a right; nay, they perform a duty. No intelligible and candid man will ſay that the conſtitution of a repreſentative republic can be preſerved in a vigorous and healthy ſtate, unleſs the people, from whom it denies its vital principle, are vigilant and virtuous in the exerciſe of the elective franchiſe. For this purpoſe they retain the right of opinion; and though they may uſe it upon miſtaken, or erroneous grounds, if they uſe it fairly and peaceably, there is no power to controul or obſtruct them.

I aſk, then, what were the oſtenſible cauſes of diſcontent? They will be delineated by the oppoſite council as ſpectres of the moſt viſionary, yet moſt horrible aſpect: but notwithſtanding any ſincere abhorrence of the manner in which the diſcontent has been manifeſted, I cannot admit that the cauſes did not afford a legal ground for exerciſing the right of opinion. For inſtance, the alien and Sedition laws. They are a novelty in this country, and their novelty might alone attract the popular attention and diſpleaſure. But were the inhabitants of the northern counties of Pennſylvania the only diſſatisfied citizens? Peruſe the debates, examine the files of Congreſs, and you will find the moſt pointed declarations of the public opinion, the moſt unequivocal marks of diſſatisfaction, throughout the United States. Exerciſing the right of opinion, the people diſapproved the laws, and the law makers. Exerciſing the right of Elec-

tion they endeavoured to promote the ſucceſs of thoſe candidates, who would regularly procure a repeal of the laws. Again: the ſtamp act was ſtrongly objected to, and produced the nick name of "Stamplers," which was applied generally to the friends of government. Now, in my opinion, there cannot be a more convenient mode of taxation than an impoſition on ſtamps; but that was not the opinion of the people of Northampton and Bucks. They had imbibed a prejudice againſt a ſtamp act in the year 1775, and not conſidering properly the ground of American oppoſition to the tyranny of taxation without repreſentation, they confounded the name with the principle of the law. I repeat that I do not agree with them, but I contend that they had a right to ſpeak freely on the ſubject.

Again. The houſe tax was objected to; not from the real, but from the imaginary burdens which it impoſed; for if it had been intended to deviſe a tax for the relief of the poor, at the coſt of the rich, for the benefit of the country at the expence of the city, there could not, I think, be a more ingenious plan than the preſent law exhibits. The oppoſition muſt evidently, therefore, have ariſen from miſconception, or miſinformation. But if their opinion of the law was ſincere, however erroneous, it is entitled to indulgence. The fallibility of the human underſtanding, and the frailty of our paſſions, muſt be reſpected in every wiſe and benevolent ſyſtem of politics, or law. A man who honeſtly acts under a falſe impreſſion of facts, may be pitied as a weak man, but he ought not to be puniſhed as a wicked one. Then, the rioters were under an evident deluſion, as to the principle of the land tax, the purity of the government, and the compenſation of public officers. They had not the ordinary acceſs to information, ſince our laws are publiſhed in Engliſh, and moſt of them only underſtood German: and this being a queſtion of property, they acted upon the firſt blind impulſe of their avarice, proving the truth of Mr. Horſefield's obſervation, "that the Germans are fond of their money, and do not like to part with it." But ſtill there is a criterion which in applying a rule of law ought always to be regarded:—I mean the moral character, and mental attainments, of the men who are arraigned. If a diſcontent exiſts, we cannot fairly expect the ſame mode of expreſſing it, from illiterate, uncultivated men, the ſcattered inhabitants of a remote diſtrict, that we may reaſonably exact from men of education and manners, formed by the luxury and refinements of a metropolis: Theſe will take care, if they do expreſs their diſcontents, to avoid perſonal indignity, and legal embarraſſments; while thoſe, without ſkill to aſcertain the limits of the law, as without delicacy to reſpect the inviolability of the perſon, rarely act without being riotous, or complain without being abuſive. Plain men, then, have but plain ways to manifeſt what they feel; and they ought not to be tried and condemned by a more perfect, and generally, a more artificial ſtandard. A diſturbance ſimilar to the one under conſideration is not uncommon in England; but the government, inſtead of entering proſecutions againſt the diſcontented, for treaſon, has ſometimes thought it proper to acquieſce in the wiſhes of the people. We all remember the popular influence in depriving Lord North of the reins of government. The attempt of a miniſter (Mr. Pitt) to involve that nation in a war with Ruſſia, was a very unpopular meaſure; murmurs and complaints reverberated through the kingdom, and, finally, he was obliged to abandon his project. The ſhop tax was

ſanctioned by all the branches of the Parliament; but it generated clamours ſo loud and ſo acrimonious, riots ſo numerous and ſo outrageous, reſiſtance to lawful authority ſo daring and ſo injurious, that the government itſelf might juſtly be ſaid to be aſſailed; and the act of parliament to be repealed by force and intimidation; yet, not a ſingle indictment for high treaſon was projected. Hence it is that I think riſings of the people, like the preſent ſhould be viewed with the determination to puniſh, account of delinquency, but, alſo, with the diſpoſition to mitigate on account of prejudice, or ignorance. In a country where party ſpirit beats high, there ſhould be peculiar caution on the ſubject: For, even in the preſent caſe, has not the joy teſtified by the triumphant majority at the late election, been claſſed with the ſymptoms of popular diſcontent and hoſtility to the government? Nor will it be denied that there actually did ariſe in the minds of the people a ſerious doubt, whether the law was in exiſtence or not; and although, I repeat, that ignorance is not a legal excuſe, yet you muſt take into view the ſtate of information, before you can aſcertain the degree of guilt. Under this ignorance, in this ſtate of doubt, can the refuſal to permit the aſſeſſors to enter a particular townſhip, be conſtrued into a fixed and deliberate intention of levying war againſt the government? Though the law had been enacted, we find that the ſubject of the law had been brought anew before Congreſs, and petitions were ſent in abundance praying for a repeal. Theſe diſcontented people might have ſuppoſed that a repeal was effected, or intended; though we, who were at the ſeat of government, knew the object of the reviſion was merely to amend, and not to reſcind the law. At the meeting at Kline's (acting, probably, under the miſtake that I have ſuggeſted) there was an expreſs declaration, that the people did not think the law was in force at that time: And here let me remark, that the priſoner, who is called the great parent of the diſcontents, was not preſent at Kline's, which appears to have been the firſt ſtep in the oppoſition to the land tax. Such was the ſtate of information at that period. Mr. Horſefield has ſaid that there were general diſcontents prevailing throughout the country: but his allegation is too vague, too comprehenſive, to be underſtood or acted upon. The citizens of a free government have a right, if they apprehend that a violation of their conſtitution is intended, or if they think that any encroachment is made on the bulwarks of liberty, or property, to expreſs their opinion; but is it practicable ſo to expreſs that opinion as not to encounter from their political opponents the charge of diſcontent and ſedition? How, in the preſent inſtance, was the popular diſcontent expreſſed? At firſt petitions to the government were propoſed, framed and ſubſcribed. This was the reſult of Kline's meeting; and in this, I preſume, no hoſtility, no levying war, can be diſcovered. At every ſubſequent meeting, whether convened by the aſſeſſors, or by the people themſelves, the reliance on legiſlative redreſs was never abandoned; though, it is true there was great intemperance of manner and of language. The aſſeſſors were ſometimes interrupted in their journies, and ſometimes joſtled in the croud; and the unmeaning epithets of *Stamplers* and *Tories*, were rudely applied to the friends of government. But however cenſurable, where is the treaſon in ſuch proceedings? A rioter and a traitor are not ſynonimous characters; and let us ſay what we pleaſe about nick-names and ſlander, the ſociety that patiently ſubmits to the ſcurrility of the Phi-

Philadelphia newspapers, will never be disgusted or enraged at the indecorum or vulgarity of the northern insurgents. But the insurgents went further; they *intimidated* the assessors: and is that treason? No; it is the very gist of the offence for which the sedition act explicitly provides. Is it not the very phrase of that act, that if any persons shall combine to intimidate an officer from the performance of his duty, he shall be deemed guilty of a high misdemeanour, and be punished with fine and imprisonment? Now let us go step by step through the evidence, and I defy the most inquisitional ingenuity to discover any thing beyond the design, and the effect, of a system of intimidation. Is there any actual force resorted to? No! I find the bridle of one assessor seized, and his leg laid hold of; but the man is not pulled of his horse, nor is he the least injured in his person. I find that a witness thinks that he heard the word "fire" given, and that he saw two men from a neighbouring porch, present their rifles at another assessor: well, did the riflemen fire? No. They had guns; their guns were probably, loaded; and if any thing more than intimidation was meditated, how shall we account for their not firing? But we hear a great deal of the personal jeopardy of the commissioners and assessors; and yet who of them sustained an injury? Mr. Chapman, Mr. Foulke, and Mr. Childs are, generally speaking, treated as men of merit and consideration; and, in particular wherever the prisoner met them, they were respected and protected; as at Jacob Fries's and Robert's taverns. To repel the plea for favour founded on such correct deportment towards the officers, we shall be told, that the prisoner was an artful man, that he was the leader; and it will be strongly urged against him, that he called on the officers to surrender the public papers. Of his conduct as a leader, I shall speak hereafter; and of his demand of the papers, it is surely sufficient to observe, that in opposition to the sense of the rioters, and at the risque of his life, he returned the papers, privately, in the same state in which he had received them.

Having spoken of the Assessors, I would wish, likewise, to review the evidence with respect to Mr. Eyrely, the commissioner, and Col. Nichols, the marshal.

[Here Mr. Dallas entered into an investigation of the evidence, to shew, that although the people acted violently at the several meetings which Mr. Eyerly had called to explain the law to them: that although Mr. Eyerly accompanied the marshal in his whole progress for serving process, and that although he was conspicuously present at Bethlehem, no personal violence was ever offered to him, or to the marshal; and all the ill-treatment they encountered, amounted to no more than an attempt to intimidate them, but which they both declared was without effect. Mr. Dallas then continued as follows.]

And are we to be to told, Sir, that these acts without force, without any apparent object but to intimidate the assessors of a particular district; that district acts of inconsiderate riot and folly shall, when connected and combined, constitute a deliberate treason, by levying war against the United States If no treason was actually perpetrated, if none was intended, when the transactions occurred I insist, that nothing previous to them, nothing *ex post facto*, can make the prisoner a traitor; the intention *at the time* must have been treasonable; or the act can never be punished as treason.

Let us now, however, proceed to enquire into the circumstances of the

reſcue at Bethlehem, and its connection with the previous diſturbances. I think the evidence is ſtrong in ſupport of the aſſertion, that the ſole, independent, conſummate object of the aſſembling of the people at that place, was to reſcue theſe priſoners. Is there any ſatisfactory proof of a combination between the people of Northampton and of Bucks? I know that an expreſſion is ſaid to have eſcaped the Priſoner, that, in this general diſcontent with reſpect to the land tax, certain perſons of a part of Northampton would join the inhabitants of Lower Milford: but let the foundation of his opinions be teſted by the facts, and it evidently aroſe, not from negociation, conſpiracy and compact, (as the proſecution ſuppoſes) but from a general knowledge, which he poſſeſſed in common with thouſands, that the land tax was unpopular throughout the adjacent country. It is enough, however, for the defence, that no combination, or correſpondence, is proved; ſince the rule declares, that in legal contemplation, what does not appear, and what does not exiſt, are the ſame. You do not find the people of Bucks attending any meetings but in their own county; nor entering into the county of Northampton at all previouſly to their appearance at Bethlehem.

Gentlemen, it might ſurely be expected, that a concerted inſurrection for treaſonable purpoſes, prevailing throughout the three counties of Bucks Northampton and Montgomery, and cemented by common intereſts and paſſions, would have been inſpired and conducted by one common council: but is there the ſlighteſt proof of ſuch a co-operation? I am aware of the communication made by Captain Staeler to the ſon of Conrad Marks; but the communication itſelf was merely accidental; and amounts to nothing more than the requeſt of one individual of Northampton to an individual of Bucks. I am aware, likewiſe, that a meſſage was received at Quaker town (as one of the witneſſes ſays) mentioning the arreſt of the Northampton priſoners, and inviting the people of Bucks to aſſiſt in reſcuing them. Who brought this meſſage, and to whom it was delivered, I don't recollect; but it ſeems, that a compliance was reſolved on; and a paper expreſſing the reſolution, was prepared and ſigned by Fries, with a number of other perſons. But was the object of the invitation, or of the reſolution to comply with it, treaſon, or reſcue;—to commit a riot, or to levy war againſt the United States? I repeat, that the ſole, independant, and excluſive purpoſe was to reſcue a particular ſet of Priſoners.

Now, if in the previous part of this tranſaction, nothing has ſtruck your minds as traitorous in the acts, or the intention of the people, I beg you to follow me, gentlemen, with ſtrict attention to a conſideration of the object that was actually effected, and the means of effecting it. The object was to obtain a reſcue; a reſcue was effected, but it was effected with circumſtances of military array: will this alter the original character of the riot? No, ſir:—if the people did not repair to Bethlehem with a traitorous intention, their arms and military equipments will not convert them into traitors. As on the one hand, I grant, that the circumſtance of military array is not neceſſary to an act of treaſon, if the intention is traitorous, ſo I inſiſt, on the other hand, that the circumſtance of military array will not conſtitute treaſon, without ſuch intention.

[Here Mr. Dallas entered into an inveſtigation of the evidence in relation to the aſſembling of the people, their march to Bethlehem, and their conduct there. In the courſe of the detail he endeavoured to eſtab-

liſh, that the ſole object of the rioters was to reſcue the priſoners ; that no injury was offered, or intended againſt the marſhal, the commiſſioners, the aſſeſſors, or the poſſe comitatis ; and that although the priſoner was forced into a conſpicuous ſtation among the rioters, his conduct had been marked with civility towards the public officers, and a ſolicitude to avoid the effuſion of blood. On the laſt of theſe points, Mr. Dallas concluded as follows :

And here permit me to remark, that if the conduct of John Fries was ſuch as to juſtify his being ſelected as a ſubject for capital puniſhment, I cannot ſee the policy or juſtice of the ſelection ; nor forbear from deprecating the conſequences of the precedent. A good man may ſometimes affect to join a mob, with a view to acquire and to exerciſe an influence in ſuppreſſing it : or an intelligent and temperate man may, for a while, be aſſociated for an illicit purpoſe, with a furious and ignorant rabble, who will naturally look up to him as a leader : but in either caſe, the power and the diſpoſition to avert, or to limit outrage, will be dangerous to the prominent individual who diſplays them ; and his only ſafety is in mingling with the crowd, whatever may be the direction or the devaſtation of the ſtorm !

Gentlemen of the jury, I have now gone through two of the general propoſitions, into which I divided the conſideration of the defence ; and, in the courſe of my obſervations, I have anticipated much that related to the third propoſition—the particular conduct of the priſoner. I ſhould here, therefore, break off, as I feel that my ſtrength, and I fear that your patience are exhauſted : but that the proclamation of the Preſident demands a moment's further attention. By the laws of the United States it is provided, that, under certain circumſtances, the Preſident may call out the militia to ſuppreſs an inſurrection, having previouſly publiſhed a proclamation, requiring the inſurgents to diſperſe. This proclamation is obviouſly in the nature of an admonition ; and if the admonition produces the effect, I aſk, whether in the preſent, as in every other caſe, it ought not to produce impunity ? Then I argue, on general principles, that if the rioters did peaceably retire to their homes upon this authoritative warning, they ought to be ſheltered from puniſhment for any offence previouſly committed. Nor is the argument without a ſanction from the poſitive authorities of the law. 1 Hale 138 : And the court will recollect, that the principle is incorporated into the ſtatute, which is uſually called in England, the riot act. There muſt ſurely, be ſome object in requiring the Preſident to iſſue his proclamation ; and the one which I ſuggeſt is equally benevolent and politic. On the preſent occaſion it produced an immediate and deciſive obedience to the laws. Beſides when we recollect, that the Preſident has the power to pardon offences, to diſcontinue proſecutions, and to grant a general amneſty, as in the caſe of the weſtern inſurrection ; why may we not conſider the proclamation as emanating from that attribute of mercy, ſince no ſpecific formula is preſcribed, by which its exerciſe ſhall be expreſſed, or announced ?*

* *Judge Iredell interrupted Mr. Dallas, obſerving that he thought it irregular to make any uſe of the proclamation as a pardon, without pleading it. Mr. Dallas ſaid, that he only meant to infer from the facts of the warning and the diſperſion, that the inſurgents never meditated treaſon.*

Mr. Dallas then proceeded to point out the differences in the nature, progreſs and turpitude of the Northampton inſurrection, and of the weſtern inſurrection : 2 Dallas's reports 349, and analyſing again the caſe of lord George Gordon, he contended that upon that authority alone, the priſoner ought to be acquitted. In the caſe of lord Gordon, the direct, the avowed object, was to obtain the repeal of a law ; and as petitions and remonſtrances were unavailing, a body of 40,000 men were convened and marſhalled to ſurround, intimidate, and coerce the Parliament. Riot, arſon, murder, and every ſpecies of the moſt daring outrage and devaſtation, enſued ; and yet, the only proſecution for high treaſon was inſtituted againſt the leader of the aſſociation ; and that proſecution terminated in an acquittal. View, then, the riots of lord George Gordon in their origin ; eſtimate their guilt by the avowed object ; aggravate the ſcene with the cotemporaneous inſults and violence offered to the perſons of peers and commoners ; and cloſe the retroſpect with the horrors which the Britiſh metropolis endured for more than eight days ; and then ſay, (exclaimed Mr. Dallas) what was the guilt of John Fries compared with the guilt of lord George Gordon ;—what is there in the Engliſh doctrine of treaſon that has juſtified an acquittal of the latter ;—what is there in the American doctrine of treaſon, that will juſtify a conviction of the former ?

Gentlemen : I can proceed no longer. The life of the priſoner is left, with great confidence, in your hands. There are attempts to make him reſponſible under the notion of a general conſpiracy, for all the actions and all the words of meetings, which he never attended, and of perſons whom he never ſaw. But this is too, too harſh, in a caſe of blood : It is inconſiſtent with the humanity, the tenderneſs of life, which are characteriſtics of the American people, and eſpecially of the people of Pennſylvania. Nor is it called for by the policy, or practice, of thoſe who adminiſter our government. I believe that to the chief magiſtrate, to every public officer, to every candid citizen, it will be matter of a gratification, if after ſo fair, ſo full a ſcrutiny, you ſhould be of opinion, that treaſon has not been committed. Such an event will by no means enſure impunity to the delinquent ; for, though he has not committed treaſon, though the puniſhment of death is not to be inflicted ; the violation of the laws may be amply avenged upon an indictment of a different nature. The only queſtion, however, now to be decided is, whether the offence proved, is like the offence charged, treaſon againſt the United States. The affirmation muſt be inconteſtably eſtabliſhed, as to the fact and the intention, by the teſtimony of two witneſſes to the ſame overt act : but remember, I pray you, what the venerable lord Mansfield ſtated to the jury on lord Gordon's trial,—remember, that it is enough for us, in defence of the priſoner, to raiſe a doubt ; for, if you doubt (it is the principle of law, as well as of humanity) you muſt acquit.

The council for the priſoner then called the following witneſſes.

JOHN JAMIESON.

Council. We wiſh you to inform the court and jury, what you know of the conduct of John Fries.

WITNESS. Sometime after laſt February court, John Fries came to my houſe ; I had heard, on my way coming to Newtown, that there was to be a meeting at Kline's. I aſked him whether there was many people there, and what they had done. He told me there was, and they had agreed not to allow the aſſeſſments to be made in the townſhip as yet ; he ſaid the reaſon was, becauſe they did not know whether there was a law paſſed on it or not ; I told him I really believed there was, for though I had not ſeen it myſelf, I had heard of it. He likewiſe told me that Mitchel had undertaken to draw up an inſtrument of writing, but he could not go through with it, and that he called upon him to aſſiſt him to do it, which he did.—On the 6th of March, I had occaſion to go to the townſhip meeting on account of a pauper which was likely to become chargeable, calling at Jacob Fries's, I had been there but a ſhort time, before a parcel of men came there, ſome with arms, and ſome without. They called for liquor, freely. They then proceeded to make enquiry whether any body knew whether the aſſeſſors were going about the townſhip or not : I do not know whether they got any information or no, but they agreed to go up to Quaker town ; after they were gone a little while, Jacob Fries and I concluded that we would ride up after them : we went to the houſe of Enoch Roberts. We went into a room, but nothing occurred there, and I then aſked Jacob Fries if he would ride down to Daniel Penroſe's : after we had been there ſome ſhort time, one of the family told us that our horſes were getting looſe, ſo we went out, and there we ſaw Mr. Rodrick, who halted : he appeared to be much frightened ; ſo I aſked him what was the matter, he told me they had catched Foulke and Childs, and that he was afraid they would kill them, and inſiſted on my going back to try to prevent them being hurt : I told him I would not, except he would too ; he ſaid he would if I would engage they ſhould not hurt him ; I told him I would not do that, for I did not know what they had againſt him. However, at his deſire I went to town, and when I got there, I think I was told they had Foulke in the ſtable ; ſo I rode up, and called him by name, and I think he anſwered me. At my deſire, he came into the houſe : while we were walking along, I told him it was a pity he ſhould aſſeſs the townſhip till they were more reconciled : I told him I thought the beſt way to quiet the people, was to ſhew them the ſmall aſſeſſments he had made, and promiſe not to go about again till they were ſatisfied. He ſaid he was willing to do that. We then walked into the room, and ſoon after we were there, Conrad Marks walked towards us with a kind of ſword in his hand, though I believe ſheathed, and ſaid to Foulke " What, I hear you are going about this buſineſs again ; did not I tell you not to do this buſineſs, but I cannot tell you in Engliſh like as I could in Dutch ; but it is for the ſake of thoſe few dollars that you go about this buſineſs." Foulke anſwered him that he did not do it for the ſake of the money. Marks anſwered, " did I not tell you that if you could not do without, come to my houſe and I would keep you four or five days ; but if you had to do this for half a crown a day, the devil would not ſend you about the townſhip. I then told Marks what I had adviſed Foulke : he ſaid if he would do that, he would uſe him like a gentleman. Then the affair of Captain Seaborne* took place, which ſeem-

* *See Thomas's teſtimony.*

ed to draw the attention from Mr. Foulke. I saw John Fries looking over some papers, but I did not know what they were, I went away.—

A day or two after the affair at Bethlehem, John Fries came to me and told me the circumstances, much the same as was related by the marshal to the best of my knowledge: he then said he did not know what to do with these Germans, for that they had got it grafted in them that general Washington was opposed to this law, and that, so poor a man as he was, he would not grudge half the expence of a man to go and get his opinion on purpose to satisfy the Germans. The next knowledge I got about it, was from two gentlemen who came from Philadelphia in order to carry the proclamation about, and they gave me some proclamations, desiring me to do all I could to get submission to the laws. I spoke to many of them, and there was a meeting called at Marks's on the Monday following. There were 150 people or more there from the three counties. It was agreed by several people that it would be best to have men chosen to form a committee, from the three counties, to consult what to do for the best. This was agreed to, and four men were chosen from each county. I was one of four chosen from Bucks, with George Kline, David Roberts, and Conrad Marks. Dr. Baker, 'squire Davis, and I think 'squire Jarrett were some. We unanimously agreed to recommend to the people, as near as I can recollect, to desist from opposing any public officer in the execution of his office, and enjoined upon the citizens to use their influence, to prevent any opposition, and to give due submission to the laws of the United States, dated 18th of March.

Was there any opposition at all when this was reported?

I did not hear any body but did consent to what was done by the committee. The people of lower Milford thought it would be necessary to have the assessments taken. David Roberts said that he believed Mr. Chapman would agree for them to appoint an assessor in their own township. It was then agreed that we should ride to him to know; which we did next day: he said he had once made the offer, but it was now out of his power. He then said Mr. Clark had been first appointed, and that he had not yet given up his commission, and he did not know how another could be appointed now; that if Mr. Clark would go about it, it would answer the end. On returning home, I called at Frederick Henny's, and desired him to draw out some German advertisements, and send them over towards Marks's, to desire the people to meet, and consent to let Clark go about. I believe he did it. At the time of appointment, the people met at Mitchel's, perhaps there were about 40 there. John Fries, and Frederic Henny were there. The people in general agreed to let Clark go about, I believe Fries and Henny did not vote. I went to Fries and asked the reason: he said he had no objection to the people voting for him, and he wished it was done; but as he was first opposed to Clark going about the township, he thought it would not be right in him to vote. I believe Henny said about the same.—I saw Fries again a few days before he was taken: he told me he had heard a report which troubled him more than any thing in his life: I asked him what it was: he said that a report was in circulation that he was collecting up men to assist the French: he said, "damn the French, if they were now to come to invade this country, so old a man as I am, I would venture my life against them; but I want nothing to do with them.

COUNCIL. Did Fries make any oppoſition at Marks's?

WITNESS. No, I heard of no oppoſition.

Has his houſe been aſſeſſed?

I do not know.

Cross examination. Was there any propoſition made there about ſigning a ſubmiſſion paper?

I do not recollect any.—I recollect Fries ſaid that if he was called upon, or ſummoned, he would come forward and deliver himſelf up.—This he ſaid at Marks's.

JACOB HUBER.

COUNCIL. Was you at the meeting at Conrad Marks's?

WITNESS. Yes.

What happened there?

It was after the proclamation, and we were chooſing the men to meet in the committee; Fries and I got a talking together. He ſays, now Jacob, you ſee the error we got into by going to Bethlehem. I anſwered to him, that the aſſeſſors would have to go about and aſſeſs the houſes; he ſaid they ſhould not aſſeſs his before he gave them a dinner, then they might take the aſſeſſment of his houſe; and if I am not at home, ſaid he, my ſon will give them a dinner.

After this meeting, what was the general ſituation of the townſhip?

Quiet. John Fries was peaceable and quiet as any man could be; I never afterwards heard of the leaſt oppoſition.

Cross examination. Did you ſee George Mitchel at Marks's?

Yes.

Was you much with him?

No, no converſation with him; he was clerk of the meeting.

ISRAEL ROBERTS.

COUNCIL. Pleaſe to relate to the court and jury what you know of this affair.

WITNESS. After the proclamation arrived in our neighbourhood, there was a ſtatement in the next weeks' newſpaper, ſtating the conduct of John Fries, which I procured, and took to John Fries. After looking over the paper, he ſeemed pretty ſubmiſſive, but ſaid nothing: he appeared, I thought much diſtreſſed in his mind. I told him that I wanted to have ſome converſation with him, relative to it. I then aſked him whether he had rightly conſidered this matter? whether he had not run himſelf into danger inconſiderately, and told him the conſequences as I thought might attend it. He ſaid he never had conſidered it ſo much as he had within a few days before. He ſaid he had not ſlept half an hour for three or four nights, and that he would give all he was worth in the world if the matter was all ſettled, and he clear of it: he likewiſe ſaid, if the government would ſend for him, he would go with him, even if a little child was ſent.

What was the general ſtate of the townſhip of Milford after the proclamation was read?

I do not know, I believe there was ſome little oppoſition to the law.

Was any oppoſition made by the priſoner?

I do not know that there was.—I recollect that John Fries farther expreſſed himſelf to me at that time, that he was charged with taking part with the French, which he took very hard, and ſignified his determina-

tion to defend the country againſt any invaſion, if any army ſhould invade our land, he would, at any time lay all this aſide, and turn out againſt them, and particularly France.*

There was a meeting at Mitchel's after that, to chooſe an aſſeſſor; Fries was there: he was aſked to vote, but he ſaid he would have nothing to do with it.

COUNCIL. Did you hear him expreſs any doubts of the exiſtence of the law?

WITNESS. Yes, more than once, I heard him ſay that he did not believe it was and eſtabliſhed law, and therefore he was determined to oppoſe it.

COUNCIL. What time did he ſay ſo?

WITNESS. I think it was the 5th of March.

Cross examination. Where was he then?

Not far from Jacob Fries's tavern, on the road. He ſaid he would oppoſe it, till he had known other counties had agreed to it, then, ſaid he, we muſt ſubmit; but he would chooſe lower Milford ſhould be the laſt.

Cross examination. At the laſt meeting at Mitchel's, did there or did there not appear a diſpoſition to wait till they ſhould have aſſiſtance from any other place.

Yes, it was ſaid that a letter had arrived to George Mitchel from Virginia, ſtating that there were a number of men, I think 10,000 on their way to join them: that letter was traced from one to another, through ſix or eight perſons, till at laſt it came from one who was not there!

Were not ſome of the company at that time in arms and uniform?

Yes.

COURT. Do you recollect what was ſaid when the letter was mentioned.

I do no recollect, but they appeared to be more oppoſed to the law than they were before.

ATTORNEY. Was there any declaration, from any perſon there, that they had their own laws, and would ſubmit to no other?

Not that I recollect.—At the meeting at George Mitchel's at which Mr. Foulke and Mr. Chapman was preſent, which was held for the purpoſe of explaining the law, there were a number (about 12) came up in uniform, and armed with a flag and *liberty* on it. They came into the houſe, and appeared to be very much oppoſed to the law, and in a very bad humour. I propoſed to read the law to them; they aſked me how I came to advertiſe the meeting: I told him I did it with the conſent of a few others: he aſked me what buſineſs I had to do it: I told him we did it to explain the law. He looked me in the face and ſaid, "We don't want any of your damned laws, we have laws of our own," and ſhook the muzzle of his muſquet in my face, ſaying, "This is our law, and we will let you know it."—There were four or five who wiſhed to hear it, but others forbid it, and ſaid it ſhould not be read, and it was not done.

* *Judge Peters ſaid he muſt do theſe people the juſtice to ſay that from all he heard, and all he ſaw, they were generally diſpoſed againſt the French; he found none at all in favour of them.*

Cross examination. Did you see Fries on the evening of the 5th of March?

Yes I did.—He asked me if they had assessed my house? I told him they had: he then asked me if I had told any body of it; I said I had not: he then added that he had forbade them to come into the township, as he did not believe it was an established law, and others should be gone through with first. I think he then added that they could not get hold of Rodrick: they had got Foulke, but let him go, and added if they had got Rodrick they would have put him under guard for that night.

Did he appear in a good temper?

No, he did not, and he seemed very much opposed to the law.

ATTORNEY. Was Fries' objection to the tax law, or to what particular law?

He did not express his opposition to any one that I heard, but to the law for assessing houses, that night: in a conversation I had with him before, he appeared to be opposed to the alien and sedition law also.

ATTORNEY. Did he seem to talk about its being unconstitutional?

I do not recollect—I know that he expressed himself a number of times, that he did not believe it was an established law.

ATTORNEY. Did he mean by that, that the law had ever passed, or that it might be amended?

I took it that he did not believe the law had ever passed; he seemed to doubt of its being established.

EVERHARD FOULKE.

COUNCIL. What was the conduct of John Fries at Quaker town on the 6th of March.

WITNESS. As I was coming from the house of James Chapman with the other assessors (John Rodrick and Cephas Childs) when I came nearly opposite Enoch Roberts's, I saw the prisoner at the Bar, and a number of others with their arms, (though I don't know that he had any, but the others had.) Some of them held them nearly as high as my horse's side, on a level, with their arms hanging down. I spoke to them as I passed and rode on till I got nearly to the other tavern, David Zellers's. When I got there, a number run out and cried "stop." Some of them addressing me by name, desired me to stop; which I did in a pleasant manner. Before any of them got to me, I think John Fries came over from Roberts's; when he was about a rod from me, he called me by my name, and told me he had told me yesterday that he would take me to day, and he was now come to do it, or it should now be done, I don't know which he said. Captain Kuyder then ran up, and seized my horse by the bridle, and a number of others came round me; the prisoner did not come himself. Some of the people there (Jacob and John Huber) came and took Kuyder off, and he then seized me by the foot, and endeavoured to dismount me, but he failed. He then again took hold of the bridle, but Hubers released me again. Fries came up and said, "Foulke, you shall be taken, if you will get off, there shall no man hurt you." He took hold of the bridle, and ordered Kuyder to hold it; I rode up to the stable, got off, and went into the house. When in the room, which was very thick of people, the prisoner came and demanded my assessment papers. I told him that I did not like to give them up; he told me not to hesitate, but to do it. In that situation I gave them to him, and told him

I was in hopes he would not take them away without giving them to me again when he had looked at them.—I then went into another room with ſome of them, who exclaimed much againſt the law. Huber ſaid they were not willing to ſubmit to it yet. Fries then gave me the aſſeſſment papers again unhurt, and told me that he had uſed me better than I deſerved, and that if I had a mind I might return him to court, which I had before threatened. He then went with me to the bar, and took me to my horſe through the mob, and held the bridle while I got on, and I rode off.

Then you received no injury?

No.

Croſs examination. Did, or did not the priſoner at the bar in the courſe of converſation at Quaker town expreſs any conſciouſneſs that he had been engaged in a dangerous enterprize?

Yes, he ſaid he knew, or thought he had tranſgreſſed the law in ſuch a manner as to endanger his life, and that I might return him if I would.

ATTORNEY Did he ſpeak of any force that was expected to aſſiſt him?

He did not that, he did the day before, when he attacked Roderick and me in the road. He ſaid there would be 700 men there to morrow morning, pointing to Jacob Fries's houſe.

COUNCIL. Are not you an aſſeſſor for lower Milford?

I was appointed aſſeſſor for the whole diſtrict.

What time were you appointed?

I do not know.

Have you your warrant?

Not with me.

Was your appointment ſo early as November?

I believe not.

Was it early in February?

I believe it was.—It was on the laſt day of the court. (January 28.)

Was it the ſame kind of warrant as other aſſeſſors had?

Yes.

Who delivered the warrant to you?

James Chapman brought it to me at my houſe.

When you were at Quaker town there was a cry for the papers from you, were theſe papers reſpecting the rating of houſes under the land tax?

Yes.

When were you firſt applied to, to become an aſſeſſor for that diſtrict?

Perhaps about two weeks before.

Who by?

By James Chapman, and ſeveral other neighbours.

Do you know whether there was a meeting of the board of commiſſioners for the purpoſe of appointing you?

I cannot ſay.

MR. EWING,

After the evidence on the part of the prisoner was closed, rose and addressed the jury as follows :

May it please your honors :

AND YOU, GENTLEMEN OF THE JURY.

YOU are now gentlemen in the discharge of the most important duty, which possibly has, or ever can fall to your lot as members of society.—This is a cause of the greatest magnitude, of the first impression.—Its importance is derived not only from a consideration that the life of the prisoner is now at stake, but also from the precedent that your verdict will establish in similar cases in future. From this view of it, it claims the highest and most serious attention that can be bestowed upon it.

When I address you on this occasion, I feel diffident, lest my ideas should not be cloathed with that perspicuity, or clearness, that I could wish ; or my sentiments delivered with that ease or Elegance that might ensure success. I shall rely upon your goodness to forgive any innacuracy of style or sentiment that your penetration may discover in my address to you.

When I address you on this occasion it is with an anxiety of mind, which I never before experienced, when I reflect upon the possible issue of this cause with respect to the unfortunate prisoner at the bar.

The situation of the public mind, now roused to resentment ; the place where this subject is made matter of enquiry ; together with the prejudices that may exist against the defendant, all conspire to form strong obstacles to the defence which I shall attempt on this occasion. But when I consider your characters gentlemen, I am fully perswaded, that you will suffer no circumstances of this kind to bias your impartial judgments, to destroy that inflexible integrity which chracterizes you ; or prevent this defendant from receiving from your hands (which is all he asks) a fair, a candid and impartial trial ; that you will hear his cause under every presumption of his innocence, until the contrary is proved by the most uncontrovertible evidence—That it is essential to the very existence of every government ; that it is essential to the preservation of life, liberty and property, that offences should be punished, and that the crime of treason, the highest that a member of society can commit, is what I will admit, but I contend that it is equally essential to the existence of a government, and to our security as members of it, that every man indicted, should have a fair trial ; to have the offence defined with certainty, and proved in such a manner, as to leave no possibility of doubt on the minds of the jury.

That this man has been guilty of a flagrant violation of the law, an offence for which he deserves to suffer, and which the good of society requires should be punished, is what I readily admit ; but I do contend, and I assert with confidence, because I think the law will bear me out, that no act the prisoner has committed can be construed treason, by the most rigid, or strained construction of law.

Gentlemen permit me to obſerve, that in proportion to the nature and magnitude of an offence, ſo ought the evidence to be.—As the accuſation againſt this man is of the deepeſt dye, as it is the higheſt poſſible offence againſt the laws and government that he could commit ; ſo ſhould the proof of it come from the pureſt ſources, and be of that nature as to eſtabliſh the crime beyond the poſſibility of a doubt.

He is indicted for the crime of treaſon :—happy for us that we are not now left to the conſtruction of judges ;—to the opinions of men of any kind, or we might be led aſtray in a variety of inſtances, and at times introduce accumulative treaſon. The people of this country, knowing the magnitude of this object, and the propriety of good ſecurity againſt ſuch conſtructions ingrafted into the conſtitution, the definition of the crime, and tranſmitted to us unimpaired. Congreſs recognized the conſtitutional definition, by ingrafting alſo the very words of the conſtitution into the act for the puniſhment of crimes : they have there preſcribed the puniſhment ; they have ſaid that the perpetrators of this crime ſhall ſuffer death. We are now to conſider how far the defendant is guilty of treaſon, as laid in the indictment. I had meant to have gone more largely and fully into this ſubject from the authorities of law writers of eminence ; but my learned colleague has ſo ably, in ſo maſterly a manner handled this cauſe, that leſs remains for me to do. I ſhall endeavour to ſhow you what is to be underſtood by levying war againſt the government of the United States, and think I can reſt on that ground with ſafety, to prove to your ſatisfaction, that the priſoner has not been guilty of the crime of treaſon.

The defence reſts upon three grounds.

Firſt. That he has not been guilty of the crime charged in the indictment.

Secondly. If he has been guilty of any crime at all, the act of Congreſs has ſufficiently defined it, and preſcribed the puniſhment not to be capital.

Thirdly. I contend that the proclamation of the Preſident ſhould operate as a pardon to take off the guilt of actions done previouſly thereunto, if not continued in.

Judge Iredell here interrupted Mr. Ewing, reſpecting the pardon ; and ſaid that a plea muſt be put in, if that was inſiſted on, but the priſoner muſt plead guilty to plead pardon. The proclamation was read by Mr. Ewing, in which he obſerved, there was no pardon promiſed.

Mr. Dallas ſaid he had begun ſpeaking on this point before, but was interrupted from explaining his idea : he thought there was much difference between an aſſemblage before and after an admonition to diſperſe : it doubtleſs would have been treaſon had they continued in arms, but their future actions put a conſtruction upon their paſt actions, and proved that they were guilty of riot, and not treaſon.

Mr. Ewing continued.—This oppoſition aroſe from ignorance ; they did not know, that the law was in force ; and the firſt time they knew that, was by the proclamation, when they actually did diſperſe, and ſubmit to the law.

The priſoner at the bar is not guilty of the treaſon laid in the indictment, for Firſt, there muſt be a traitorous intention, and Secondly, that intention muſt be carried into effect. In order to prove that, we muſt trace his conduct through Bucks county, and then proceed to Bethlehem, where the act of treaſon is ſaid to have been committed. In order to diſcover what is meant by levying war, we are obliged to reſort to the authority,

or deciſion of Engliſh courts on the ſtatute of Edward the III. but though every thing that has been done there, is not to be conſidered as a proper precedent for us here, yet there are ſome rules and conſtructions in England that will apply to particular caſes here.—Wherever a ſet of men take up arms to oppoſe themſelves, to the government generally: to ſubvert the laws, or to reform them; in that caſe they are ſaid to levy war againſt the government. The great criterion to diſtinguiſh what amounts to this crime is the *quo animo*, or the intention with which the act was done. The object muſt be of a general nature, and not an aſſembly to do a particular act, this would not be treaſon. I ſhall now ſhow by the conduct of the priſoner that his views were not of a general nature, and that it was by no means marked with that degree of malignity which the council for the proſecution have repreſented. You will conſider that the reſidence of the priſoner was remote from the ſeat of government; and from that ſource of correct information, which as a member of ſociety he ought to have received, whereby to regulate his conduct. The people with whom he converſed were unacquainted with your language, warmly, and perhaps ſuperſtitiouſly attached to old eſtabliſhed laws and cuſtoms of the place where they reſided. Having been accuſtomed to be taxed and aſſeſſed by men of their own choice; men whoſe conduct they had a right to ſcrutinize, and whom they had uſed to bring to account: You need not be ſurprized that theſe people would at leaſt heſitate at admitting innovations into their cuſtoms: the ideas which ſtruck them naturally were, "From what ſource can this law ariſe, that ſhould ſend a ſtranger into our townſhips to make aſſeſſments; a right which excluſively, as we think, belongs to us?" They did not feel ſuch prejudice againſt this law, conſidered as to its effects but from the manner of its breaking upon their view: The introduction of this new principle alarmed them, but they aſſembled not to oppoſe the law, but to gain time for information of the real exiſtence of it. Under this deluſion they laboured, becauſe they had not the advantage we have, of enjoying information, and the illiterate ſtate they were in operated as a great ſource of their oppoſition. This ignorance and deluſion was peculiarly manifeſted throughout all their conduct. Their firſt meeting was held to conſider whether it was a law or not; not being ſatisfied about it, and diſappointed in their information, they met again, in order to tell the aſſeſſors not to come about their townſhip to make the aſſeſſments, until their doubts were removed: the aſſeſſors went on however, and all this while the people were enveloped in darkneſs. They warn the aſſeſſors; they tell them "we don't want to repeal this law by violence"—No, if they had, arreſting the aſſeſſors would not have done it, they muſt have gone to an higher ſource; and if they had gone there with a determination to repeal or oppoſe it, the act might have received the ſtamp of treaſon. I deny that they arreſted any of the officers of the government in the execution of their duty: we have repeatedly aſked upon what authority theſe men acted; we have aſked, and have not obtained ſatisfaction, and we therefore preſume the authority does not exiſt; and where there is no law, there is no tranſgreſſion. But ſuppoſe they had produced their authority, to what would their oppoſition have amounted? To a riot, and no farther. What courſe did Fries take in this ſcene? Humanity and tenderneſs, wherever his interpoſition was neceſſary, and he was preſent, characterized him. So far from ſubverting the govern-

ment: so far from preventing the execution of its laws; so far from injuring, or punishing these assessors while entirely in his power: he prevented the very people who were with him from doing those acts, and he himself was industrious to release them, and lead them into a place of safety. If conduct like this is to be construed into the crime of treason; what act, I ask, will not by and by: if this is treason, it is unhappy for us, for thousands in the United States have been guilty of the same thing. Because a law exists, must we acquiesce implicitly—have we not a right as freemen, to think—have we not a right to object to it? It is impossible that we should be all of one mind, with respect to the beneficial consequences of a law—some difference of opinion will necessarily exist. The opposition was manifested in different places, but it was all to the same law; but the opposition did, in no instance amount to a traitorous intention, nor was it ever manifested in their conduct from the beginning to the end. I ask you, if Fries ever took any active part in it, so as to distinguish him as their leader? It has been declared that he opposed the law, and likewise that he took men to Bethlehem to rescue the prisoners, but we do not find there was any command given. There was a difference of opinion on their way, whether they should go to Bethlehem or not: If he had commanded these men, and had intended to levy war against the government, some of them would not have returned; but he would have led them on to the object without consultation. Trace him towards Bethlehem: there were several who could not pass the bridge, because toll was demanded: when he came up he said "count my men." No doubt he meant only the men of his own company, because we do not hear that he paid for more than his own. It does not appear that he had any communication whatever, informing him that such a party were to meet there that day, much less can it be imagined there were any treasonable communication. He went up with his men, but we find while another company formed before the house, his men stood aloof; they did not form there in the ranks, nor did they come there for that purpose. The consideration that some of their country people were taken prisoners, and they thought it was unconstitutional and oppressive for them to be taken to Philadelphia to be imprisoned and tried, induced them to insist upon the rescue. What did they say?—"We will bail them: if they are guilty, they ought to suffer." Bail is refused: the marshal could not have granted that request, but they did not know that. When they found this their proposal was rejected, they determine they will have the men. Then John Fries appeared—a man who had used the assessors respectfully: a man whose character was that of humanity—he was chosen to go in to the marshal to demand the prisoners. One said he should be commander of them; but it does not appear that he did take the command at all; but we hear of two others who commanded on that day. Fries went in and conversed on the release of the prisoners with the marshal, who with great firmness said, that they must be taken from him. He went out again, and the men being pretty warm, he checked them: went a second and third time: all his aim was to prevent the shedding of blood; he pledged himself to the marshal that no harm should come to him from him or *his* company.

If the object of these people had been of a general nature, men so obnoxious in the county as Balliott, Henry and Eyerly would not have es-

caped their vengeance, or reſentment, when they were ſo much within their power: had their conduct been ſtamped with treaſon, they would not have been ſatisfied with reſcuing the priſoners: the officers would have ſuffered, but not one we find was hurt. One ſtrong trait, worthy your obſervation is, that their view in going to Bethlehem was not to prevent the operation of the law, but ſimply to reſcue the priſoners; and in this, their conduct cannot amount to more than a riot and reſcue: an offence defined as well as its puniſhment, in an act of Congreſs. As the overt act muſt be laid in the county where the offence was committed, and if it is true that treaſon was not committed at Bethlehem, where ſhall we look for it? the gentlemen will not attempt to prove, I preſume, that the beginning of the treaſonable act was in Bucks county, and its completion at Bethlehem. But Bucks has nothing to do with the preſent indictment at all, and ought not be brought into view.

Mr. Ewing then referred to Foſter 210, and 1 Hale 143 and Lord George Gordon's caſe, each of which, he ſaid, far exceeded the caſe of the priſoner at the bar. But, he obſerved, as the time and patience of the jury, to which he felt himſelf ſo much indebted, and which had been ſo ſeverely tried already in this lengthy trial; and as the defence had been ſo ably handled by Mr. Dallas, and what remained would be, he had no doubt, well conducted by the juſtly acknowledged great talents of another learned advocate, he ſhould forbear enlarging. The verdict you give, gentlemen, ſaid he, will not only be of vaſt moment to the priſoner, but will alſo eſtabliſh a precedent for future ſimilar caſes, and it will be to your immortal honour if you preſerve and decide with impartiality and firmneſs; while on the contrary, it will be a ſource of ſhame and diſgrace if you do otherwiſe, through the influence of prejudice or the operation of external circumſtances. I can ſafely truſt the life of my client in your hands, under a conſciouſneſs that thoſe feelings of humanity, and a juſt eſtimation of the evidence, will outweigh all other conſiderations, and thus will your righteous verdict gain you the gratitude of you country, the approbation of your own conſciences, and the warmeſt thanks of the defendant.

Mr. SITGREAVES.

With submission to your Honours.

GENTLEMEN OF THE JURY.

I ACKNOWLEDGE the propriety of an obſervation which dropped from one of the council for the priſoner in the courſe of his addreſs to you: that is, that thoſe who are concerned for the proſecution in criminal caſes ſhould not endeavour, by their eloquence or ingenuity to divert the attention of the jury from the truth, or to ſtretch that truth ſo as to give them more unfavourable impreſſions on the facts than they will bear. This I muſt acknowledge would have been unneceſſary advice to me, becauſe the views I ſhall be able to take of this ſubject will be but feeble and imperfect. In the courſe of my limited and ſhort experience, I have

been but little converſant with criminal courts, and have paid but little attention to the criminal code, and never have been engaged in a caſe ſo important as the preſent, my public duties having, for ſome years paſt drawn me from the bar. It may not be wondered, then, if I have not been able to bring into this court talents equal to meet thoſe called to the aſſiſtance of the priſoner. I muſt therefore ſay I ſhall not be able to do juſtice to the caſe. I confeſs I feel a deſire that thoſe perſons who have been guilty of this ſecond outrage and diſgrace brought on the ſtate of Pennſylvania, may feel the puniſhment the law inflicts. I hope you and every one who hears me will join in this ſentiment, for on it hangs much of our peace and ſecurity. I have no objection to going ſtill farther—my lot is caſt in that part of Pennſylvania where this unfortunate circumſtance occurred: I feel particularly for the good order, peace, and proſperity of that part of the ſtate, but I have unhappily ſeen it in ſuch a ſituation that all the harmony of ſociety was deſtroyed, and if I were not to feel a ſtrong deſire that peace, harmony, and good order ſhould be reſtored, I ſhould be deſtitute of humanity; for we all know that crimes can only be prevented by inflicting ſuitable puniſhments on the delinquents. I wiſh, gentlemen, that the law ſhould be executed againſt thoſe who were criminal, but when I ſay ſo, let me not ſay that I wiſh the priſoner at the bar to be executed: No, my earneſt wiſh is, that the general good of ſociety may be procured: this man muſt be tried by the evidence that is brought againſt him, and upon that alone he muſt ſtand for his guilt or innocence.

Having ſaid thus much, I begin now to premiſe one or two things which I think ſhould be altogether ſet aſide, but which has been much inſiſted upon. You have been told that the priſoner appears here on the charge of treaſon, under all the diſadvantages of denunciation by the Preſident of the United States in his proclamation. Any of the aſſertions of that proclamation are not to have weight on your minds, nor will it operate againſt the priſoner: he is to be tried by the evidence only, and you are not to regard any thing you have heard out of doors before this trial commenced: nothing ſhould operate to doom the priſoner to an harder fate than the law, ſupported by fair teſtimony provides. It is alſo as true that nothing contained in that proclamation ſhould operate to the benefit of the priſoner: if it ſhould not convict him, no more ſhould it acquit him. The analogy which has been drawn does not exiſt between this proclamation and the riot act of England, as you have been told, but even if it did, the inference would not be juſt. You were told that all who diſperſe on the reading of that act, are pardoned for crimes previouſly committed: it is not ſo. But more of that preſently. The proclamation of the Preſident was iſſued for one purpoſe, and the riot act, in England, is read for another. The Preſident has no authority to call forth a military power but under certain circumſtances: wherever a combination ſhould form, which are too ſtrong for the civil power to quell, then the military may be called in to aid the civil, but with a humanity intending to prevent the effuſion of human blood, and to call out military force as ſeldom as poſſible, the law has provided that a proclamation ſhall be previouſly iſſued, that the offenders may diſperſe peaceably to their homes: but there is not a ſyllable about pardon in it. The Preſident has the power to pardon, it is true, but he has not done it by that proclamation.

The riot act, which paſſed in the reign of George I. was enacted in order to prevent tumultuous aſſemblies: if people refuſed to depart within one hour after it was read, they were guilty of felony, for which they were to ſuffer death, although the offence before was only a miſdemeanour, yet the refuſal to depart makes it felony, but it cannot be pretended that any ſuch departure excuſed them from the riot, but on the contrary, proſecution and conviction frequently takesplace forthat crime, although they ſhould diſperſe; and therefore it does not affect the merits of the caſe. The proclamation is as a blank paper before us, and therefore we muſt examine this caſe upon its own independant merits.

Gentlemen, in ſumming up this caſe on the part of the United States, the method moſt natural to adopt is,

Firſt. To conſider the law as relating to this ſubject.

Secondly. What was the amount of the offences perpetrated at Bethlehem, and.

Thirdly. Enquire whether the facts produced in evidence are ſuch as to convict the priſoner, and make him guilty of the charge in the indictment as applying to his particular caſe.

Firſt, with reſpect to the law on treaſon. I ſhould have expected it was ſo well underſtood that there would have been no difference amongſt us, however we might differ on its application to the priſoner, yet unfortunately there is, and we muſt endeavour to meet thoſe objections. The ſtatement which was made to you at the opening by myſelf, and a ſtatement by the attorney of the diſtrict, I believe to be correct: I am confirmed in that opinion, and have no doubt it will be given to you by the court in the charge as correct. We are not at this day to diſtract ourſelves with theory: The law of Edward 3 of England, called by ſome "the ſacred ſtatute," and by others the parliament who enacted it, is called "The Bleſſed parliament," that law and our conſtitution have adopted the ſame words. The judges in England, as eminent for their patriotiſm, as eminent for their tenderneſs, and as eminent for their ability as any ever were in this country, have ſolemnly ſettled this particular in a variety of inſtances and unfortunately, young as this country is, there has been the neceſſity for a court of the United States for this diſtrict to ſettle the principle likewiſe. The adjudications under this ſtatute were made by men all well known for their love of liberty. We have no need to conjure up a different expoſition, or different form of conſtruction, than what has already been admitted in both countries: indeed it is what cannot be ſhaken at this day. It is, *that all inſurrections by a multitude of people with intention to uſurp by violence or intimidation the lawful authority of the government in matters of a general and public concern, in which the inſurgents have no intereſts diſtinct from the reſt of the community is* TREASON. From the beſt conſideration I have been able to give the ſubject, I have formed this definition, which I believe compriſes the whole that can be ſaid about it, and I believe no more: I think this aſſertion will appear to be juſtified by the beſt authorities. If this deſcription is juſt, the offence is clearly ſettled and amounts to "levying war againſt the United States." In the moſt eſſential parts, I think this rule has been ſettled by the council for the priſoner.

The *Intention*, which conſtitutes the gift of the offence, is proved to have been to ſome general object; if the intention was to gratify ſome

private concern or intereſt, even if there be all the apparatus of war, as guns, fifes, drums, &c. whatever violence ſhould be committed under it, it cannot amount to treaſon, becauſe the intention is not to a public matter, whatever other crime it may amount to, and whatever enormities may be committed. This may be the caſe, in order to gratify ſome particular paſſion, or ſome particular intereſt. It is the intention, which diſtinguiſhes treaſon from other crimes: Riot, is generally much like it, but not being of a public nature, is only a miſdemeanour: Treaſon on the contrary, is the greateſt crime known to the laws of any country. Lord Mansfield at the trial of lord George Gordon, expreſſes the ſame opinion. If this is a true poſition, it is certainly an irreſiſtable inference, that inſurrection for the purpoſe of ſuppreſſing and preventing the execution of a public law, is to prevent or obtain a public object, and of courſe muſt be high treaſon within the rule of our conſtitution. Yes, this has been repeatedly denied, by the gentleman, to be high treaſon; nay, he even went on ſo far as to ſay that in England, no ſuch thing had taken place; he ſays it muſt be a combination to oppoſe all the laws; or at leaſt, to force the repeal of a law. Gentlemen, I think I have ſtated enough, to convince you that this is erroneous: If treaſon is the unlawful purſuit of an object of a public nature, then the ſuppreſſing of a public law is treaſon. But I would not have you reſt on my definition if I cannot bring you full proof in favour of it. See 1 Hawkins Chap. 17, Sect. 25. 1 Hale, 133. And this poſition is confirmed ſtill further, by a precedent of our own. 2 Dallas, 346, &c. I conſider this ſettles the queſtion beyond all doubt, and it ought to reſt ſo forever, the deciſion was ſo ſerious and ſolemn in both countries. I ſhall aſſume this as an acknowledged point throughout the whole of my enquiry. I ſhould have added the opinion of Mr. Erſkine in lord George Gordon's trial. Speaking on the treaſon ſtatute, he ſays, None of them have ſaid more than this, that war may be levied, not only by deſtroying the conſtitution, or the government itſelf, but by aſſuming the appearance of war, to endeavour to ſuppreſs a law which it has enacted.

It is certain that Britiſh caſes go much farther, and if it was neceſſary and the caſe required it, it could be juſtified by deciſions in England upon points infinitely leſs ſtrong, than thoſe I have quoted: points which were ſettled at a very early period, which neither the parliaments nor the courts have ever interpoſed to change. Caſes of public grievances, whether real or pretended, whether they grow out of law, or out of practice, as pulling down all encloſures, &c. which are the invaſions of private right, from its univerſality—is high treaſon. Again, uſurping the powers of the government by pulling down all bawdy houſes, is High treaſon. The caſe referred to by Mr. Bradford in Mifflin county was, that a particular judge was driven from the bench: they did not oppoſe the ſitting of the court, but they had a reſentment againſt the individual, and therefore the proſecution was for riot. This will aſſiſt us in our farther enquiries upon the preſent occaſion. This crime is ſaid not to be treaſon but a reſcue and bare obſtruction of proceſs, and within the ſedition law, or within a clauſe of the penal code, and therefore not treaſon. But whatever nature an offence may be, of itſelf, if it is accompanied with this particular act of treaſon, the act becomes treaſon: I willingly admit that a reſcue of priſoners may be without treaſon: a perſon may be willing to riſk the law rather than

his friend ſhould ſuffer, and may therefore reſcue him ; this would be but miſdemeanour : If ten men in arms go to an officer and reſcue his priſoner, if it be done in a private manner, it is no more than a miſdemeanour; but if theſe ſame ten men in arms go from motives of a public nature, then it becomes treaſon. The intention therefore, makes the crime to differ.

It is ſaid farther that the legiſlature of the United States have paſſed a ſolemn opinion upon it, and that they have called it no more than a combination of certain facts ; a reſcue, &c. againſt which it has provided, and therefore it cannot now be called treaſon. I think this received a good anſwer by judge Wilſon, 2 Dallas 351, and the objection was ſolemnly over-ruled by the court. The ſedition act was not made at that time to be ſure, but if it had, there can be no doubt but it would receive the ſame anſwer, and meet the ſame fate by this judge if read in objection. But the firſt ſection of the ſedition act deſcribes a different ſort of combination, and is not levying of war. There muſt be of neceſſity a conſpiracy in levying war, but there may not be in an unlawful combination.

Judge Peters.—Whatever the crime would have been without a treaſonable intention, with a treaſonable intention would conſtitute the overt act.

Mr. Sitgreaves.—The caſes in the books are ſtrongly demonſtrative of this particular. 212 Foſter. Benſtead's caſe. " Certain unpopular meaſures having paſſed in the council, the odium was thrown on the archbiſhop of Canterbury. A paper was paſted up in London, exhorting the apprentices to riſe and ſack the archbiſhop's houſe at Lambeth, and accordingly ſome thouſands went with a declaration that they would tear the archbiſhop in pieces."

It was not attacking the individual, but the officer that became high treaſon. The ſame with reſpect to the attack on general Neville's houſe during the weſtern inſurrection ; the attack on him was, becauſe he was an officer, and therefore being upon the office and not the man, it was upon the government, and high treaſon.

Such is the general opinion of treaſon ; the great enquiry will now be what was the intention with which the offence at Bethlehem was perpetrated ? It is allowed to be a reſcue ; it is conceded alſo that there was an obſtruction of proceſs : If it was ſo it was part of the general ſyſtem which being of this public nature, obtains the magnitude and operation of treaſon. Before I go into the examination of this, I will make an obſervation on what has been ſaid : that the overt act muſt be proved in the county where it is laid. I heard this poſition, but I did not diſcover any application of it, and therefore I am at a loſs to know how to treat it. There exiſts in England, and in the ſtate of Pennſylvania, a form in the direction to the grand jury, which deſerves notice ; they are ſworn to enquire for *the body of the county*. This cauſes conſiderable difficulty particularly where ſomething done out of the county is required as an ingredient in the charge, and if the beginning of a crime was in one county, and its completion in another, the difficulty would be greater ; but even thoſe difficulties are remedied. The idea of his honour judge Peters the other day, appears to be found. That a diſtrict is the ſame as it reſpects the United States, as a county is to a ſtate, and therefore, the grand jury

are drawn, not from the body of the county, but from the body of the diſtrict, and the whole extent of the diſtrict is equally connected with the *venue* if it be laid there. As to the evidence, therefore, I conſider the crime may be laid in one county, and proved in another. 2 Hawkins, chap. 46, Sect. 182. I conſider whatever rule applies in England or in our ſtate governments relative to counties, is the ſame reſpecting diſtricts under the general government of the United States; likewiſe, if the overt act be proved in the county where it is laid, you may go out of the county for evidence to ſhow the intention with which it was committed. This, I think, cannot be denied. In Foſter 9, we ſee that an overt act not laid, may be brought as evidence to ſupport one that is laid, in order to ſhew the intention.

With reſpect to hearſay evidence, the rule of law is, that the circumſtance of the oral teſtimony is regarded, as it may tend to eſtabliſh other evidence, though of itſelf it be no proof. There are a variety of inſtances in which it is neceſſary to be admitted, though there is a rule againſt it in others. In all caſes where proof is to be made by evidence of general reputation it is uſeful: ſo upon this occaſion, it is competent to us to prove the general ſtate of the country; if proper to ſhew the general ſtate of a country where inſurrection prevails, it is as proper in order to ſhew the general combination, the deſign and intention, becauſe it may be the only effectual way of coming at that knowledge. For inſtance: this information which was received by the commiſſioner in the diſcharge of his official duty is proper evidence to ſhew why the law was not carried into effect, and conſequently the criminal ſpirit of the country. Popham's reports 152.

Mr. Sitgreaves then went into the caſe of lord George Gordon, which had not been repreſented to the jury by Mr. Dallas to his ſatisfaction. He related the circumſtances of that riot at length. He ſaid the acquittal of that gentleman was not a certain proof of his innocence: doubts might have ariſen on the minds of the jury as to the ſufficiency, or character of the evidence, or there may have been a contradiction of teſtimony, by which all the credit of it would be taken away. Beſides, it did not appear to him that the act of High treaſon was committed; the multitude who accompanied Lord George to the Parliament houſe did not go to compel a repeal of the law, or to overawe the Parliament, but from a report that the numerous ſignatures were not rightly obtained, they went to ſtamp truth on the inſtrument, and convince Parliament of the reſpectability of the ſigners. Beſides the main point of evidence of what a perſon heard Lord Gordon ſay in the Lobby, was received doubtfully by the jury. Many things went to make the teſtimony not ſo unambiguous as it ought to be on a trial for life or death, and on that account perhaps the learned judge charged them, if a doubt hung upon their minds, to acquit the priſoner. Upon the whole no inference can be drawn from that caſe.

Gentlemen, another extraordinary poſition was taken by both the council in defence of the priſoner. It was ſaid that it could be no offence to reſcue priſoners who were taken up for acts committed againſt men who acted without authority, nor to oppoſe men who had not authority to aſſeſs under this law. It was attempted to be ſhown you that ſome of the aſſeſſors had not received their warrants agreeable to the act of Congreſs,

and thence all the outrages were tolerated ! I do not ſuppoſe that the gentlemen engaged for the priſoner means to go beyond the caſe in which they are engaged, but I muſt ſay that their zeal on this occaſion has introduced a dangerous principle—if the apoſtle of any inſurrection had come reeking from the gore of Europe, and had preached up to you this doctrine, he could not have done it more compleatly than thoſe gentlemen ; agreeable to this the whole country may raiſe themſelves into array againſt thoſe who *de facto* exerciſe the authority of the government and the laws, yet if called to account the court muſt be informed, if the ingenuity of the council can find a fault in the appointment of the perſons engaged in the execution of the laws, that they have not tranſgreſſed the laws and upon that account! Is not this at onceſapping the foundation of ſociety, and by a kind of encouragement of inſurrection, ſtriking hard at the root of all government? This is an oppoſition in my opinion upon a dangerous and deſtructive ground. I am not diſpoſed at this time to enter into any argument whether it is neceſſary to prove the appointment of the officers, but admitting it is true, that upon the indictment of perſons for obſtruction of proceſs or obſtruction of a public officer in his duty, is no offence without he prove his due appointment, yet it does not follow that facts given in evidence to prove an outrage, ſhould require all that ſtrictneſs of examination. You will obſerve that the priſoner does not ſtand charged with any thing but the reſcue at Bethlehem, he is not now charged with the offences he committed in Bucks, or any where elſe, much leſs with any thing where he was not preſent. Theſe previous tranſactions are given you to ſhow the intention with which the laſt outrage was committed : it is only to ſhew the tendency of the deſign. Theſe gentlemen exerciſed the offices, and it does not appear that there was the leaſt doubt expreſſed in thoſe counties of their authority, neither by the priſoner nor any perſon whatever who aſſociated with him, at any time or on any occaſion : their oppoſition was not founded on any ſuch pretext, but it grew merely out of the law, and therefore it muſt appear that the outrage was an unequivocal fact, conducted with the intention, ſo far as we can collect, to defeat the law. On theſe grounds there is no neceſſity for proof of due appointment. But what are the objections, or what proof do they require. There is no pretenſions to a doubt reſpecting the legal appointment of any officer, but the two aſſeſſors at Penn in Northampton, and Milford in Bucks : Mr. Eyrely himſelf tells you that all the reſt were appointed by the board of Commiſſioners, and that at Penn, the aſſeſſor refuſed, and Mr. Balliot had the blank to fill up. Reſpecting the other Mr. Foulke ſupplied the place of Clark who held his appointment, and Mr. Foulke was appointed to aſſiſt him. How then, gentlemen, from thoſe two caſes, could a general inference be warranted that *the* appointments were irregular, and upon that ground theſe outrages be juſtified?

We have heard much about the danger of following Engliſh precedents, and about the words *high Treason*. There is a ſpecies of treaſon in England which cannot exiſt here ; that is, conſpiring againſt the life of the king, and ſpeaking of mere words which have frequently been conſtrued into that crime. It has been a queſtion of great doubt whether words can be called treaſon, but in that country or this, it is neceſſary to prove the intention with which a crime was committed, and therefore mere words, though it is true cannot convict, yet if a man has done a

lawleſs act, we may exemplify the deſign by words, even of the priſoner himſelf. With reſpect to an action done publicly and notoriouſly, that is a matter capable of poſitive and abſolute evidence, plain to the ſenſes; thoſe who ſee it can tell of it, but there can be no way of diving into the heart: if the party himſelf, from that receſs, ſhould develope his deſigns, theſe declarations made, either by himſelf or others who heard him, can prove the intention of his actions, and for that purpoſe is good evidence.

Gentlemen I have now ſaid all which I think neceſſary with reſpect to the law on treaſon. I am confident I have not done juſtice to it; but what I have omitted will be amply ſupplied by the attorney of the diſtrict, and their honours upon the bench.

I ſhall now proceed to inveſtigate the facts as they have appeared in evidence, and apply the law to thoſe facts, in order to ſhow you what ſhare of guilt the priſoner tranſacted. In doing which I ſhall only ſelect the moſt prominent features of the teſtimony which may go to prove my poſition.

Firſt, with reſpect to levying war. I think it will require but few words to ſhow that there has been an inſurrection in the three counties; that at Bethlehem there was a multitude of people in arms, amounting to the full ſenſe of the words of "levying war with arms:" the inſurgents had all the apparatus and accoutrements of a regular military force, and they went there in military array. This is proved by fifteen witneſſes (not by two merely). It is farther certain that this multitude of people perpetrated atrocious and lawleſs offences, and in contempt of all legal authority, after ſolemn, reiterated and repeated warning; that the marſhal, conformable to that humanity which characterized him, ſent a deputation to them, requiring them to go home, and to abandon their purpoſe; that he ſelected perſons who were moſt likely, from their political opinions to procure the object, but nothing would do for them ſhort of what they ſet out upon, and the miſſion failed.

We will next conſider for what purpoſe this outrage was committed: It was ſaid to be ſimply for the purpoſe of releaſing the priſoners: this was the abſtract and naked deſign. If ſuch is the fact, the priſoner muſt be acquitted, but if he had an object beyond that: if it ſhould appear that this was one link in the chain of oppoſition to the laws, then it amounts higher; it amounts to treaſon. It is my purpoſe to ſhow you that their deſigns were higher than a mere reſcue, and that it did not flow from any particular regard to the priſoners in cuſtody, but it was a public oppoſition, and one means uſed with a view to prevent the execution of a law of the United States. Gentlemen, the mere recital of one or two facts will be ſufficient to bring this home to the mind of any man who is not determined to ſhut his eyes againſt plain teſtimony.

It is in full and compleat proof before you, that in the counties of Northampton and Bucks, the oppoſition was almoſt general, and that in the townſhip of Milford; all along the river Lehi, and both ſides of the mountain, there was an union in oppoſition to the law, uniformly conducted with ſyſtem, menace, and threats; that the perſons who thought proper to aſſiſt in the execution of that law, were previouſly intimidated not to accept of it, and after they had accepted, they were prevented from executing it, and in many places, until the march of the army, the law did actually remain unexecuted. I ſhall not ſtate to you the particulars

of this evidence, but remark that the ſyſtem was general, and that it was accompanied with threats and menace, and that the friends of the law, and thoſe who were peaceably inclined, were prevented, under the influence of this terror, from ſpeaking their minds on the occaſion ; and even the magiſtrates of the country were ſo impreſſed, or ſo intimidated, as not to perform the duties of their office : That the law was completely proſtrate, and perſons who would have given teſtimony againſt them for theſe proceedings were afraid to do it. In the courſe of this proceeding, it was repeatedly declared, that if any perſon ſhould be arreſted for oppoſition to the law, that they ſhould be ſupported. This ſyſtem of menace was general ; it was not an oppoſition grounded particularly upon the obnoxious characters of perſons who were employed in the execution of the law, but upon the law itſelf : There was an offer of a particular commiſſioner to uſe his influence, that they might chooſe their own officer, but that would not ſatisfy their object—no, they ſaid if they accepted that offer it would be approving the law, and that they would not do. Mr. Everly the commiſſioner, had been for many years the repreſentative of this diſtrict in the Legiſlature : Mr. Balliott had been in the Legiſlature, in the Council, and in the ſtate convention, which proves they were men of confidence in their diſtrict, and that the particular diſlike now exemplified was not to them as men, but as officers under the law. One of the council for the priſoner went minutely into all their views, and the veins through which they acted, and endeavoured to palliate, or excuſe the conduct of theſe inſurgents ; while, at the ſame time he appears to know what were the views of government in proſecuting the delinquents ; but there is no neceſſity to anſwer that, becauſe the priſoner is not on his trial for obſtruction of proceſs. I moſt ſolemnly diſavow that political party ſpirit enters at all into this proſecution, and beg the jury will diſmiſs all party ſpirit and prejudice from their minds : However we may differ on points of law, we muſt agree with them that the people had a right to examine and explain the law, and expreſs their diſlike to this or any other law. Their oppoſition to this law might have been right, or wrong ; it does not alter the caſe, and God forbid that any motive of the kind ſhould influence us to revenge : Theſe are natural rights under a free government, which every citizen has a right to exerciſe. We are not now enquiring into the nature, or grades of any, or all thoſe particular offences ; whether this particular outrage is a riot, or that a miſdemeanour, or whether it amounts to treaſon, we are ſimply ſhewing to you, from the evidence collected, the weight and force of thoſe facts ; to wit, that there was oppoſition to this law, and that univerſally, and that theſe people did their utmoſt, to endeavour to ſtop the execution of the law ; and that theſe acts were in ſtrict union with the laſt act at Bethlehem, of the intention of which, the previous acts collectively are plain proof, for certain it is, that an act illegal in its nature, may receive colour and complexion from one that is ſtrictly legal. Suppoſe a man had reduced his thoughts on this ſubject to writing, without any intention of communicating it to any perſon ; ſuppoſe in that writing his intentions are fully declared with which ſuch writing was drawn ; then this act, though innocent in itſelf, would be competent evidence to ſhew the intention with

which a subsequent outrage was perpetrated, and it would be in full proof to shew that a violent opposition to the laws in that country particularly to the act for the valuation of houses, and that it was not from a personal or private motive, but generally an aversion to the law itself, so that a long time after the period fixed for its execution, the law actually remained unfulfilled. In several parts the people returned to a sense of their duty and submitted to the laws, and happy would it have been for the government as well as themselves if they had all done it; for then this investigation would have been prevented: but in some parts, the marshal, and those who were with him, who were not volunteers as has been insinuated, but acted in conformity to their duty as public officers.—These were insulted, arrested and obstructed as officers; The marshal was abused by numbers of people at Millar's town, and he was not able, though he touched Shankweiler, to execute process on him. Gentlemen, all I ask of you, is to connect the circumstances in your minds; the general course of events which gave rise to what afterwards was consummated at Bethlehem. The prisoners who were rescued were desirous of accompanying the marshal to Philadelphia; they would rather not be liberated;—they were taken from various parts of the country, unknown to each other, and more so to the persons who rescued them: there was no private attachment, regard, or resentment; What therefore could be the motive of the insurgents? Could it be interest? No, it would be bad policy to spend dollars to oppose a tax law rather than cents to support it. Was it a private distinct interest they had, which did not concern the community? If not, agreeable to Judge Foster, it was treason. I have said that these prisoners were not known to the insurgents; I would make the exception of Shankweiler; but you will observe that he never did surrender himself to the custody of the marshal, and though some said they were come to see him as a neighbour, others to see his partner, (accuser) &c. yet he was not *de facto* in custody: It could not be to rescue him that this large armed body met, because he could have been safe by keeping at home. But one solemn fact respecting the others demands a solemn inference: The Lehi prisoners had cordially submitted to the law, and thus desired to recommend themselves to the mercy of the government by penitence, and actually at last gave the marshal their individual assurances to meet him at Philadelphia: I ask then by way of inference what becomes of all the private object, or the neighbourhood esteem necessary to vindicate these insurgents? It was not for the prisoners' sakes, but through opposition to the law that they did this act, for it is plain that the persons in custody of the marshal were afraid as much to trust themselves in the hands of the mob, as Mr. Eyerly or Mr. Balliott were. They doubtless had a treasonable, a rebellious determination to oppose the government; the previous declaration of the party was, that "if any persons were there in confinement who were opposed to the law they should be rescued," was a plain indication of their opposition to the law, and that this rescue was a part of the general opposition. Mr. Sitgreaves then went into a review of the evidence respecting the meetings at Upper Milford, and at Schymer's, where, he said, opposition to the law marked the conduct of the people, but at Lower Milford, the prisoner at the

bar by his own confeſſion, eminently diſplayed his intention; three witneſſes corroborated the fact: "This was the third day he had been out on this buſineſs; he had a ſkirmiſh yeſterday, and would have another to day (7th of March) if the priſoners had not been given up." This clearly proves that the buſineſs at Milford was cloſely connected with that at Bethlehem; thus being all parts of one whole, the former now are full and compleat evidence of the latter. In Lower Milford they reſolve that the law ſhould not be executed yet, becauſe they did not know it was a law: In reply to this we may ſay, it is inconceivable to ſuppoſe that any people ſhould be ſo ſtupid as to doubt the exiſtence of a law, when the aſſeſſors were actually going about the country in conformity to it; this is incredible notwithſtanding the charity we are forced to have for theſe people's ignorance. They further reſolved, that their townſhip ſhould be the laſt to ſubmit* to it, if it was a law. Is not this as much as to ſay, If others aſſiſt us in rebellion we will go on, but if all ſubmit, then we will alſo. No thanks to them. The aſſeſſors found it ſo, for they were chaſed, inſulted, and finally obliged to abandon the townſhip, and yet, in that townſhip the utmoſt poſſible means were uſed to convince them of their errors. At Mitchel's it was propoſed to read the law, but in vain; they "did not want any damned laws." An offer was made to them to chooſe their own aſſeſſor, which was likewiſe treated with diſdain: They ſet the moſt ſolemn warning of conſequences at defiance, and defied even the government itſelf; ſometimes vainly flattering themſelves, that they had all the people coming to their aſſiſtance, they ſet at nought the judicial authority, becauſe they ſuppoſed they had arms and numbers ſufficient to ſupport their oppoſition. At Quakers town they reſolved to go to the reſcue, and there we find them all declaring oppoſition to the law, and defiance to the government: They were engaged in theſe acts when they received information from Northampton county that the priſoners were in cuſtody, and then they ſigned a reſolve to go to reſcue them.

Gentlemen, when theſe facts are taken into view, ſo immediately preceding, and ſo directly pointing to what took place at Bethlehem, can you heſitate, as honeſt men deſiring to do juſtice, and ſpeak impartially between the priſoner at the bar and his country, that he went there, not merely to reſcue priſoners, but to execute a part of the general oppoſition to that law of the United States? If he has done ſo, he is guilty of Treaſon. Let us now attend to the evidence which grows out of the avowal of the parties themſelves at Bethlehem at the time of the outrage. Theſe are previous indications, which certainly point as truly to the intention, as the needle points to the pole.

Two perſons appeared in arms juſt at the arrival of the paſſe: the Marſhal thought proper to take and diſarm them: upon being queſtioned, they anſwered they came there in order to ſee what was beſt to be done for the country. They did not come to aſſiſt Shankweiler; they did not profeſs to have any friendſhip for the priſoners, but to ſee whether the intereſt of the country was to be promoted by treaſon and rebellion. Can there be a ſtronger proof than this that the object was of

* *The council reminded Mr. Sitgreaves that this was sworn to by but one witness.*

a public, and not of a private nature. Keifer ſaid he heard " it was to be made out about them laws." This is poſitive proof that it was to be ſettled that day, whether the laws or the people were to be triumphant; if they could overawe the marſhal, probably they thought they were to be triumphant. It is true this was not the declaration of the priſoner at the bar, but of another perſon: upon this you will obſerve, that where a great number embark with one general object and deſign, the acts and declarations of each are chargeable to all, and are proof againſt each and all. 6 Term. caſe of the king againſt Stone. Though a man does not act or ſay one word, yet abetting the object, it leaves him equally reſponſible for the whole with thoſe who actually ſpeak or do. That this deſign was of a public nature I farther prove, becauſe it was not this, that, or the other priſoner they demanded but " the priſoners," without knowing who were in the cuſtody of the marſhal: they would not go from the ground until they had the whole of them. After the marſhal had liberated them, ſuppoſing one was left, the demand was made for him, and the marſhal was forced to give them proof that he was gone. Indeed the conference of Mr. Fries with the marſhal is ſufficient to ſhow the object, and ſurely the application of his own conduct to his own caſe will not be diſputed. Jamieſon tells you that Fries' own ſtory was correſpondent with that delivered by the marſhal: referring to the marſhal's teſtimony it appears that Fries, in converſation with him, when he delivered up the priſoners, expreſsly avowed that it was not out of any friendſhip or attachment, but that his motive, was oppoſition to the laws; that the laws were unconſtitutional, and that he would not ſubmit to them, and for this reaſon he had come to take the priſoners, and he would perſevere until he had them. The marſhal told him " you will be hanged." He treated that with contempt, and told him it was not in the power of the Government, for if they were to ſend a military force, they would join in oppoſition to the law with them, Now this is a declaration of Mr. Fries, their leader; their ſpokeſman; their repreſentative, and ſhall we not give credit to it? From this declaration, and the concurrent teſtimony, I think there cannot be diſcovered a crevis at which a doubt is to enter. Mr. Fries, when he came into the entry, talking loud, and with an importance becoming his dignity, gave his general opinion upon politics, ſaying that thoſe who were now at the head of affairs, were all tories during the war, and in this way found fault with the laws. I do not find fault with the word " tories." I believe it bears analogy with the ridiculous word " Stamplers," and only can tend to ſhow the general diſapprobation expreſſed againſt the government, but when a variety of things concur, of whatever little importance they may be in themſelves, they are increaſed by their accumulative weight, and thus become worthy of notice.

Gentlemen, it is farther given in evidence that, during the time they were at Bethlehem, there were repeated threats of violence thrown out againſt Mr. Eyerly, Mr. Balliott and Mr. Henry, on which account the the marſhal deſired them not to ſhew themſelves to the people: theſe gentlemen who had been the confidential and favorite friends and ſervants of the people are now in a dangerous ſituation, the objects of reſentment, which reſentment, we have good reaſon to conclude was occaſioned by their offices under the government.

Mr. Sitgreaves then anfwered fome of the remarks of Mr. Dallas on the conduct of Mr. Eyerly, and explained away the inconfiftancy of his teftimony. He faid it was clear that John Fries, the prifoner was an active and influential character through this dark fcene, in which he was recognized by all who were there, even by perfons who had not known him before: he was not merely an aider and abettor of Treafon, though that would have made him guilty of it, but a leading man; a conductor of the violence committed.

You will remember that when the marfhal fent forward a deputation to thofe at the bridge, they were prevailed upon to halt, and attend to their propofitions: when they agreed and promifed upon their honours not to pafs the bridge until the return of their own deputation from the marfhal; though the horfe did go over, yet the foot remained until the prifoner at the bar came up with his men. He inftantly appeared the prominent, the active leader of the expedition; he fettled the toll with the keeper, and they all went over. When Samuel Toon upbraided Captain Staeler at Bethlehem with breaking his word and paffing the bridge, his anfwer was we came over with Captain Fries and the Bucks county people. When the main body was coming up, he marched at the head of the footmen: when Mr. Mulhollen met them, the anfwer was received from Fries. It was he who was appointed by them to go to the marfhal. Here let me make a remark upon what has been dwelt upon as a circumftance much in his favour; that is, that Fries always did his utmoft toward the prevention of violence. Let not the merit of any man's actions be withheld; I agree in that with the council that he has avoided the effufion of human blood, and appeared to endeavour to prevent every feverity, fo far as was compatible with the accompliftment of his purpofe; Nay, I will fay that Mr. Fries has fhewn an Urbanity and Humanity towards the affeffors in Bucks county which has done him credit and honour. But let us not forget that every fact which difplays his humanity, at the fame time eftablifhes his influences, and more—his authority over thofe who were with him. When he came into the room where they were abufing Mr. Childs, he fays "point out the man who committed this outrage and he fhall be punifhed" when he was gone, they began upon Mr. Childs again. At Bethlehem, when he told the people not to go on yet, we find them obey him, and if he had carried it farther, they ftill would have obeyed him. Thus you fee, gentlemen inftead of this rendering him affiftance, it confirms his controul over them and makes him principal in the tranfaction. Again, amidft all his Urbanity did he not execute the whole of his purpofe? Did he not fay "Foulke, you fhall be taken" notwithftanding the refpect he had before profeffed? Did he not, when he faid to Mr. Childs he was very forry, for what had happened, demand and obtain his papers? Did he not fay to the marfhal, my men fhall not hurt you, but I will have the prifoners? As much as to fay all this fhall be done as eafy as poffible, but it fhall be done. While we admit his humanity on the one hand, we ftill find it coupled with his purpofe, his determination to obtain his object. Twelve witneffes prove that the prifoner was active at Bethlehem fo far then it is in full proof by fix times the number the Conftitution calls for. He was not only at Bethlehem a commander, but he was there a volun-

teer: he came there from a great diſtance; he was induſtrious, and made a great Sacrifice of his own private intereſt to go there; he came out of his own county to accompliſh the general purpoſe for which they had aſſembled: he went there with all the inſignia of military rank. I have obſerved that he was emphatically the great ſpokeſman between the Marſhal and the people, and therefore he alone was admitted up ſtairs; he came out to explain to his men the ſucceſs of his embaſſy: that the marſhal had ſaid he could not comply: that he had arreſted theſe people at the command of the judge, and at laſt, when the marſhal told him he could not deliver them without force, he calls upon them to the onſet; he tells them he would be their leader; begs of them not to fire firſt; tells them they muſt go through an armed party on the ſtairs, and if he ſhould drop, they muſt fire again, and do as well as they could for themſelves. In conſequence of his invitation, they went into the houſe: and at that critical moment the marſhal delivered up the priſoner to them, to prevent violence.

I need only refer you to the teſtimony brought by the priſoner to prove that he was conſtantly active in the grand buſineſs of oppoſition through the whole courſe. He wrote the paper at Kline's and at Fries' to invite them to go to Bethlehem; he warned the aſſeſſors not to go on with their buſineſs, not even to another houſe. He declared he had a great regard for them, but it was againſt the law he ſhewed this hatred; to which he ſaid he never would ſubmit. He defied the government, telling how many men he had ready. In converſation with Chapman, he told him the number he could raiſe; Chapman told him it was impoſſible; that they could not cope with the number government would ſend "we'll try then who is ſtrongeſt" he replied: He went away in a great paſſion when told that the aſſeſſments were going on, then, ſaid he, it ſhall ſoon be as it is in France." He ſeems to have anticipated all the horrors of a civil war; for when told of the conſequences, he ſaid, if they once began, he knew not where it would end. He appeared to argue the point with as much zeal as though he thought he could prevail upon the government to deſiſt from enforcing the tax. "You ſhall not go to another houſe," he ſaid: but finding they did go, he attacked them at Singmaſter's, with a determination to take Rodrick priſoner, but not taking him, he let Foulke go whom he had taken, and promiſed to take them the next day, he took two of them the next day, but let them go on a promiſe to deſiſt from aſſeſſing; at the ſame time declaring his determination not to ſubmit to this law, but that it ſhould be repealed. The party then reſolved to go to Bethlehem, but they did not ſeparate, till he had procured from them their ſignatures to an engagement to go and accompliſh their purpoſe. When on the march to Bethlehem, and met by young Marks, he was one who prevented their returning, and they actually did proceed, and got to Bethlehem, where this ſcene concluded.

Here then gentlemen the evidence cloſes. We find this man is not of a yielding texture; he ſtill continued in his oppoſition even at the time there was a recommendation to ſubmit to the laws: at a meeting at Marks's it was determined to recommend ſubmiſſion to the officers, and all the laws of the United States, and to *desist from opposition to the laws.* This is proof that there had been oppoſition to the Laws in the three

counties. When theſe things were done Mitchell aſked Fries if he ever did intend to oppoſe the laws. "Yes I did," was his anſwer.

In the teſtimony of Mr. Roberts we have proved the general ſtate of oppoſition, as well as the guilt of the priſoner: this witneſs was called by the priſoner's council. To be ſure he proved the priſoner's penitence and ſubmiſſion. If he had not been guilty he could not have been penitent. He ſaid he had not ſlept for ſeveral nights: an acknowledgment ſo much the more pertinent to prove that he had been doing what he knew was wrong.

Gentlemen of the Jury.—I have endeavoured to ſhow you this ſubject in all the points of view I am able, ſo as to give you a right underſtanding of the facts; and permit me to declare to you that I have not wilfully perverted either the law or the facts to the beſt of my knowledge; yet it is poſſible I may have done it, if ſo you will be undeceived in thoſe particulars by the court.—Gentlemen, you have a ſolemn duty to perform: we have all had a diſagreeable and tedious undertaking I pray you to do it in ſuch a way as may do juſtice to the priſoner and the bar, and at the ſame time conſider how much the happineſs, the peace, and tranquility of your country, depends upon a fair, impartial and conſcientious verdict, which there is no doubt but you will deliver.

Mr. LEWIS.

With ſubmiſſion to your Honors.

GENTLEMEN OF THE JURY,

IT is now become my duty to addreſs you on behalf of the priſoner at the bar, who is arraigned before you on the important iſſue of Life or Death: I do it with the more confidence, becauſe I have not been able to learn from the council for the proſecution, a ſingle inſtance of Engliſh law that comes up to the preſent caſe, in good times or in bad times, ſo as to denominate it Treaſon, except in a determination during the bloody reign of Henry VIII, and that is mentioned among the evils of the time: I have not been able to find it under any exiſting circumſtances whatever, and yet any perſon who is the leaſt acquainted with Engliſh hiſtory or law, muſt know that the exciſe law and the ſhop tax, as well as ſome others, have led to riot and inſurrections, and a variety of trials have been held upon them. It may be right to make the experiment upon the preſent caſe; but, unleſs this proſecution is warranted, eſtabliſhed in good times, and upon ſolid grounds, I am ſorry to ſay, but truth compels me to declare, that it is a burning torch in the hand of a madman; it is a flaming ſword in the hand of a tyrant, and has done immenſe injury in England. I know there is no intention in the attorney in this caſe, to do any thing that is wrong; yet I wiſh more reflection had been uſed, before the proſecution had gone on. Thus it was in England reſpecting Hardy, Took, Thelwal, and

others; thoſe who moſt underſtood the whole of the charges were not ſatisfied to call their crime a miſdemeanour, though there was no direct point in ancient or modern law, warranting any other indictment, yet the experiment was tried, but an Engliſh *jury* appreciated it in its proper light, and they reſolved to do nothing which their anceſtors had not done, not even in the application of conſtructive treaſon; and therefore after a mature diſcuſſion they returned a verdict of *Not Guilty*. When, on the preſent occaſion, the cauſes and proceedings are duly conſidered, I am ſatisfied you will feel it a duty you owe to the priſoner now before you, and to your country, to pronounce a like verdict. It is not becauſe a circumſtance any way ſimilar to this has once taken place, and been argued upon the ſame grounds, that therefore it is right it ſhould take place upon the preſent occaſion; adopting a principle of this kind has often made courts in arbitrary times, take gigantic ſtrides over the ſtatute of Edward III, ſo that a man could not know how to look, act, ſpeak, or even think, without difficulty and danger. I have ſaid that I am not able except during the mandatory reign of Henry VIII, to find the trace of a ſingle inſtance where reſcue, under any circumſtances whatever, has been found to amount to treaſon, and if ſucceeding ages did not conſider themſelves bound by that practice, I truſt you will not ſit here to eſtabliſh a law, but to give it ſuch a conſtruction as juſtice demands of you. I have undertaken this cauſe the more readily, becauſe I do not undertake to juſtify, to palliate, nor to excuſe; but I cenſure the tranſactions which have given riſe to this trial as much as the council for the proſecution does: I am ſenſible as they are, that thoſe people violated the law without cauſe; and I came not here to ſet up a mock excuſe for them: No, it is my opinion that they merit exemplary puniſhment, but that puniſhment muſt be conformable to *law*, or, when once the law is overturned, the conſequences will be incalculable; offences higher than the preſent may be committed with impunity by ſome, while thoſe of leſs grade will be ſeverely puniſhed in others. It is not for me to ſay that the priſoner is entirely innocent: To me, to the court, and to you it is totally immaterial whether he has acted wiſely or fooliſhly; guilty or innocently, if not guilty of the offence upon which he now ſtands upon his deliverance. I may be aſked here how I came to defend a man, who I admitted had violated the law, and in ſome degree ſat the government at defiance. My reaſons are theſe: It is the priviledge of every man to have a fair trial, and not to be condemned without being heard, eſpecially in affairs of an highly criminal nature; few men are capable of defending themſelves before a court, and in a capital caſe, from the perturbation of their minds, ſtill leſs ſo than in any other: And woe betide that country, where a man ſo charged ſhould not be entitled to every aſſiſtance that he can procure. By the ſtatute of William III, which is the firſt that ever allowed council at all, the court were obliged to aſſign council, who were obliged to render all the aſſiſtance in their power; the ſame is allowed by our act of Congreſs, (p. 112. Sect. 29.) for without that, he may be conſidered as condemned unheard, and the public mind would be left unſatisfied as to the innocence or guilt of the accuſed. Thoſe who have entertained the ſurpriſe I have hinted at, at my being thus engaged, have doubt-

leſs acted from the beſt of motives, but, not ſatisfied with this, and wiſhing to ſpill the blood of a man before he is proved guilty, ſome calumniating ſcoundrel has, in a public print, had the hardihood, during the preſent trial, to impute to the unhappy priſoner's council, the baſe influence of gold, when all concerned know very well that the priſoner has not a farthing to give, and not a farthing, nor even a promiſe of any, was ever given to thoſe who have undertaken his defence. I will ſay no more reſpecting this vile attempt, but that the law ſays no publication ſhall take place which may tend to influence a court or jury, while a trial is pending, and therefore it is an high contempt thrown upon the court, and upon you, and the probability is that either the author or the publiſher will be brought to anſwer for his conduct.

There is one thing, gentlemen, I would wiſh to caution you againſt: there are many citizens who ſuppoſe that the troops will never turn out again unleſs a conviction takes place on the preſent occaſion, and that an inſurrection will ſoon appear again: but this is paying a poor compliment to our volunteer troops, to ſuppoſe they would not be ſatisfied without ſhedding blood: Gentlemen, let no arguments or conſiderations have weight with you but what are ſupported by law, and then decide, regardleſs of the conſequences. Another matter I would caution you againſt, is one with which I found very conſiderable difficulty to cope, but at length I diveſted myſelf of it, and I pray you to do the ſame: I mean all kind of prejudice as to the party tried and trying. Our Conſtitution, and our laws, are wiſely calculated to preſerve the happineſs and intereſt of ourſelves and poſterity: our Government is compoſed of tried patriotic characters, and our political bark, with ſuch men at the helm, need not fear a ſtorm; but notwithſtanding this, it is villified and abuſed: Theſe are grounds for prejudice to work upon, and it is difficult, I can ſay by experience, to avoid its influence; but when we come to the ſacred temple of Juſtice, even if to decide between A and B, on a matter of trifling property, we are ſworn to an impartial and unprejudiced deciſion; and how much more is it demanded of us in a caſe of life and death? It is neceſſary to enter that temple diveſted of opinion or bias, otherwiſe there is not a fair ſcope for our reaſonable faculties to act, nor can our conſciences be acquitted of guilt. I will take the liberty of reminding you that your oath is "that you will well and truly try, according to evidence;" this obliges you to expel every thing from your minds which you might have heard out of doors reſpecting the whole buſineſs of the inſurrection, excepting ſuch only as is proved by the evidence. Your preſent ſituation, gentlemen, impoſes upon you a duty which is highly important; important as it concerns your country, the priſoner, and likewiſe yourſelves: it concerns him, becauſe his life or death is, in ſome meaſure placed in your hands; it is upon your verdict it depends whether he ſhall continue with induſtry to ſpend the remainder of his life with his family and friends, or whether he muſt leave them all, and be ſuſpended between heaven and earth to a gazing multitude. Your deciſion is of importance to your country, becauſe we are now treading upon the dangerous, and, I had almoſt ſaid, unbeaten ground of conſtructive treaſon, and becauſe it may and will operate as a precedent to future proceedings. Nor is it leſs important to yourſelves

becauſe, if owing to honeſt intention, and miſtaken views you ſhould go farther than a reflecting moment would dictate, in ſome circumſtance of a public nature which might *possibly* occur, the work would be irretrievably done, the reflection would come too late, and pardon would be out of the queſtion.

I will now proceed to conſider the particular offence imputed in the indictment to John Fries, the priſoner at the bar, by which he muſt be convicted, if at all. [Mr. Lewis, here read the indictment.] To this indictment he has pleaded not guilty, and you are ſworn to decide upon the iſſue. The queſtion is not whether he has, or has not been guilty of a riot, or reſcue: he may have been guilty of an high miſdemeanor, of this or the other deſcription, but the queſtion is, has he ordered, prepared, and levied war againſt the United States? That is the language of our conſtitution, and the act of congreſs formed thereupon. In order to inſure the conviction of this man at all events, it has been ſtated to you, and that with no ſmall degree of confidence, that, as the framers of our conſtitution have adopted the words of the Engliſh ſtatute, the courts are bound to admit the expoſitions which have taken place upon it, from time to time in the Engliſh courts: though we have laws of our own, yet in order to know the true meaning of our conſtitution we are to go back into the remoteſt and moſt dark ages of Engliſh hiſtory, to underſtand its meaning! The Engliſh ſtatute, or the opinions of the courts of juſtice are equally become part of the code in that country it is true, and it was as poſſible for the framers of our conſtitution to have extended the one as the other to this country, had they choſen ſo to do, but their not doing it, is a preſumptive proof that it was not acceptable. To me it appears ſtrange that while the Engliſh ſtatute is not in force here, the Engliſh conſtruction of that ſtatute ſhould! that is a poſition I never mean to ſubſcribe, but controvert it from the beginning to the end, of this caſe. As we have enacted laws of our own, and have not extended the laws of England to this country, we muſt put our own conſtruction upon them, and not the determination of an Engliſh court. Neither the Engliſh laws, nor the opinions of Engliſh judges are to be regarded any farther than is conſiſtent with our good, to appreciate which the ſituation of the times when thoſe opinions were given, and whether the judges were dependant or independant are important conſiderations. I do not mean to find fault with Engliſh deciſions in general: I believe that with regard to property, ſince the judges have been rendered independant of the crown, it is as wiſely adminiſtered as the laws of any part of the globe are: but they were not always in a ſituation to give impartial opinions, when they held their ſtation at the will of an arbitrary monarch, who could haſten or delay cauſes at his pleaſure, to which the judges were the moſt obſequious tools. Such has been the deciſions of ſome periods reſpecting treaſon. But it is not true that the very words of the Engliſh ſtatute are adopted in our conſtitution; they very materially differ: the ſtatute of Edward III, does not provide that confeſſion muſt be made in open court if received at all: it does not ſpecify that two witneſſes ſhall be neceſſary to eſtabliſh the fact, but it was left to the court upon principles of common law: nor does it ſay a ſingle word about an *overt act*. Since, then, the

two ſtatutes are ſo diſſimilar in important points, it would be very wrong to admit of the ſame conſtruction in both. So careful was our government of the lives of our citizens, viewing the injuries other countries had ſuſtained by indefinite laws, they provided that the crime ſhould be put in the indictment, and ſupported by the teſtimony of two witneſſes. In England there might be one witneſs to one overt act, and another to another.

But I ſhall now proceed to ſhow what does, or what does not amount to levying war: in doing this, we are not to go back to corrupt times, under corrupt judges, nor do I think the obſervations of thoſe judges are in the leaſt obligatory upon our courts, but how far they will be reſpected, in another queſtion; we may reſt aſſured they will be regarded no farther than reaſon will ſuggeſt. This I conſider of importance, not only at preſent, but to poſterity. Moſt of our laws, it muſt be remembered, are from England, and were brought with our anceſtors as their birth-right: this was the caſe wherever Britiſh ſubjects emigrated, but as ſoon as we became independant ſtates, we enacted laws of our own, although in a great degree copied from Britiſh ſtates, but they became new under our conſtitution.

I think gentlemen, I ſhall be able to ſhew you, upon the opinions of men found in law knowledge in England, that the definition of treaſon in our conſtitution will not bear the conſtruction that has been put upon theirs at an early period. We have an expreſs and diſtinct meaning of this crime in our own acts of Congreſs. An act paſſed 1790 (Vol. 1, page 100). Sect 1 ſhows what treaſon is, and particulariſes wherein it ſhall conſiſt. Sect. 5 defines the puniſhment which ſhould be inflicted on a reſcue of perſons committed to cuſtody, or in the hands of the officer. But there was another act paſſed defining the preciſe circumſtances attending this caſe, this was paſſed after the declaration of the judges on the caſe of the weſtern inſurrection, and from its being enacted ſubſequent to all others upon this ſpecies of crime, appears to me to be binding upon our courts: I mean the Sedition act. It appears to reach the preſent caſe in the fulleſt extent; the language of that act is, whoever ſhall combine or conſpire, &c. ſhall be guilty of a high miſdemeanor: this act does not ſpecify the number: a townſhip, a county, or twelve counties equally is within the law. Combining to *prevent* the execution of the law: this reaches the action, whatever may be the number or force uſed: it is a *misdemeanor* and ſhall be puniſhed with *fine* and *imprisonment*, not death. Whether the object ſhall or ſhall not be effected, the law ſays the puniſhment ſhall be the ſame. Here then is a ſolemn declaration made by the legiſlature itſelf, the ſame body that enacted the puniſhment of death to what they termed treaſon by a prior law, and ſurely that authority had the greateſt right to put a conſtruction on, or make an alteration in their on law. If there is a legal definition of the crime committed by the priſoner at the bar, this act contains it: every caſe is here provided for by the puniſhment of fine and impriſonment, and had a proſecution taken place under this act, a conviction would have been certain, and the puniſhment would have been rigorous, and exemplary.

Under this head of Engliſh conſtruction, I would aſk how it can apply to us, when we conſider that before the act of William III, no perſon charged with high treaſon was allowed council to plead for him, unleſs he ſtated ſome objection in point of law which made an argument neceſſary, and even then he could not do it without firſt admitting the truth of the fact charged againſt him, and yet all the deciſions of Engliſh courts alluded to were formed before that period! Further. Not only was the accuſed not allowed council, but if he had hundreds of the moſt reſpectable witneſſes to prove the falſity of the allegations, he never had a right to bring them forward untill the reign of William III. Theſe deciſions, gentlemen, of the Engliſh courts, which are called up as precedents for us to regard, were formed under theſe arbitrary circumſtances: No council allowed even though the priſoner was deaf and dumb, nor witneſſes, if he could even prove he was hundreds of miles diſtant at the time. Further, to ſhow what dependance can be placed on the ſayings of theſe men, you will obſerve that untill the time of William III. all the judges held their commiſſions during royal pleaſure only, and even untill the firſt of George III, the judges were never compleatly independant, and of courſe were obliged to ſtudy the royal pleaſure; their opinions being extorted before the trial commenced. The conſequence of all this is plain, that no impartial opinion could be given. It was common before trial firſt to cloſet theſe dependant judges and bring them to ſubmiſſion, if their opinions ran counter. Bacon, the greateſt, wiſeſt, but meaneſt of mankind, thus ſtooped to become the tool of his maſter. Thoſe who could not thus be brought over were deſpiſed, and more obſequious perſons placed in their room, and it was not 'till they could have a deciſion thus formed that perſons were brought on their trial for high treaſon. And yet we are referred to theſe perſons to tell us what is the meaning of our own ſtatute on treaſon! Thus it was that many of the beſt citizens of England fell a ſacrifice, and for no other purpoſe, many of them, than becauſe they poſſeſſed exalted virtue. During the exiſtence of this ſtate of things, the judges would ſet ſilent on their bench during a trial for life, and hear the crown officers, inſtead of acts and expreſſions of humanity to the unhappy priſoner, abuſe him with the moſt opprobrious and inſulting language. Influenced by this meanneſs, Sir Edward Coke, while attorney general, deſcended to abuſe the great and good Sir Walter Raleigh, with the vile epithets of *Traitor*, *Viper* and *Spider of hell*, &c. turning away from him with the greateſt ſcorn: and this was the manner in which trials were commonly managed. See Foſter, 234.

It was well known that the ſtatute of Edward III, made no proviſion whatever reſpecting the charging of an overt act in the indictment, nor does it ſay any thing about proof, but a ſtatute enacted in the reign of Edward VI, made two witneſſes neceſſary in caſes of high treaſon, but Foſter ſays no great regard was paid to this better ſtatute 'till near a century after, and the reaſon aſſigned was that it was not for the ſafety of the crown, or to the common well known rules of legal evidence. It was common to admit one witneſs of his own knowledge, and another by hearſay, if it was even from the mouth of that one, and at the third or fourth hand, and frequently the depoſitions were taken out of

court to be read, rather than bring them into open court. This muſt appear an uncommon repreſentation of the adminiſtration of juſtice, but it is a fair picture of the times under which the deciſions took place which are brought againſt us. At the period in which the ſeven biſhops were tried, lord Cambden declares that juſtice Powel was the only honeſt man that ſat on the bench. Bleſſed juſtice! I know that ſince the judges have become independant men in England, there has been as much independance in their conduct as in any country; but then, as Hale tells us, theſe deciſions had already taken place, and therefore they muſt be abode by; but he takes care to caution future judges how they introduced new caſes by putting new conſtructions. The queſtion now is, whether this court and jury are prepared to be bound by judges thus principled and thus circumſtanced, to form a deciſion upon *our own law*. I contend that theſe deciſions are by no means binding upon us, we have the ſedition law, which comprehends the whole caſe. In 1 Hale 132, and 1 Blackſtone 69, it appears to be lamented that the independant judges of later days have no power to alter the rules of law eſtabliſhed in the dark ages of Engliſh juriſprudence, otherwiſe, we have reaſon to believe, they would not be in exiſtence at this day. Lord Kenyon, when council for lord George Gordon, declared, that he did not think the parliament of Edward III, ever had any deſign that conſtructive treaſon ſhould exiſt at all, or any wiſh to leave room for it to be introduced. We are certainly, therefore, unentrammelled by every foreign rule, otherwiſe the queſtion would be, what rules we ſhould adopt, and what not. It is a rule in law that ſtatutes affecting life, ſhould never extend beyond the letter of the law, ſo as to leave the poſſibility of a doubt. If that is a rule reſpecting penal ſtatutes in general, abundant more ſo is it neceſſary reſpecting the high crime of treaſon. Above all things, if bad times ſhould even happen in this country, and bad times may come here as well as they have in all other countries, it will be of vaſt importance that the law ſhould be known preciſely: it will be of conſequence to a citizen to know on what law he is to be tried, if he becomes the devoted object of any one's reſentment, or commits a crime: it is of conſequence that the flood gates of uſurpation and tyranny ſhould never be left open, and the liberties of our citizens be thrown away *ad libitum* on the uncertain ground of conſtruction. 1 Blackſtone 88. Foſter 58. we read that it ought to be "clearer than life itſelf."

We now come to examine the true, full, juſt, and reaſonable meaning of our own treaſon ſtatute; for I do not admit that conſtructive treaſon ought to exiſt at all. A line is drawn, and if we ever croſs it, where are we to ſtop? Treaſon againſt the United States, we find, conſiſts in "levying war againſt them, &c." The queſtion is, what is levying war? Levying war may fairly extend to the three following things:

Firſt. Where a body of men take up arms, and array themſelves in a maſhal manner againſt the government, with a view to put an end to its exiſtence. This is its plain natural meaning, but cannot be ſaid to have been tranſacted by the priſoner at the bar, and therefore requires no farther definition.

Secondly. It is expreſsly levying war, if a part of the union, throw off all allegiance and authority of the United States, totally diſregarding

its laws and inſtitutions, and act as a divided people as though they did not belong to them.

Thirdly. Where laws have been enacted by the union, purſuant to the Conſtitution of the United States, and a number of people, being diſſatisfied, ſhould, of their own authority, by numbers, or force of arms, take poſſeſſion of the legiſlative or executive authority, and by this force of arms or numbers ſhould undertake to compel either of the departments of government to act as they dictate, thus robbing the government of its legitimate power, by aſſuming it themſelves.

No doubt the good of poſterity was intended in the conſtitutional definition of treaſon, and we are to touch it with a trembling hand indeed, leſt it moulder, and grow into, God knows what. Now, as this is an act which was deliberately formed, if we go upon the dangerous ground of conſtruction, that cannot be done ſo deliberate: No, I ſay it was to be handed down pure to poſterity, and we ought not even to depart from a letter of it. If liberty of conſtruction is to take place in any degree, by ſo much it tends to render the conſtitution vague and uncertain, and we know not where it will end. If the conſtitution only intended the three definitions of levying war which I have laid down, it is clear that a man cannot overſtep thoſe conſtitutional limits without intending to do it. Go beyond this, and you leave jurors and judges to make the conſtitution any thing and nothing: a mere noſe of wax, to be moulded into any form at their will, and they may be excuſed, becauſe left to exerciſe their own judgment upon it, but lord Hale has charged you not to do this, even though encouraged by a parity of reaſoning: agreeable to his apprehenſions, it is deducible that if ever we have a bad preſident, preſidential encroachment may wreſt the conſtitution to every thing that may ſerve any particular purpoſe. But God forbid either ſhould ever happen.

Stating theſe as expreſsly levying of war, (and I know of no other) I call upon the proſecutors to produce a ſingle inſtance, except in the inconſiſtent reign of Henry VIII, wherein the reſcue of one or more priſoners, by one or more people, has ever been ſaid to amount to treaſon. I may go farther, and aſk thoſe gentlemen whether a refuſal to obey the law, and reſiſt the officers who came to execute it has ever been called treaſon but by themſelves? We find that *universality*, a deſign to pull down *all* priſons, &c. is requiſite to make the offence treaſon: it is only a general oppoſition to the government. But why are we to look for univerſality if we are to take a caſe like this, and call it treaſon? If an officer of the government, (agreeable to this doctrine) goes to execute proceſs, and that proceſs is reſiſted by one individual, does he not deny the authority of the government? Yes, as much ſo as though 50 or 100 were engaged in it: the whole intent the *mal amens* being exerciſed to reſiſt it, it becomes treaſon. The offence now charged conſtitutes nothing more nor leſs than oppoſition to legal authority. The pulling down of a ſingle meeting houſe, a ſingle brothel, or a ſingle priſon, was not allowed to be a denial of the authority of the government in antient uſage, but when it was done with a general intent, it became treaſon. Now we contend that except the univerſality and generality of deſign in the act charged can be pointed out, it does not amount to

treaſon. When I ſaid I know of no caſe whatever when reſiſting the execution of law amounted to treaſon, I ſhould have mentioned the exception of reſiſting the *militia* law: this muſt be conſidered in a light of reſiſting the army, becauſe it is part of the general army that this law provides, and oppoſing the army in any way would be treaſon, but reſiſting or oppoſing any other laws is only a miſdemeanor, except an attempt be made to ſubvert all laws. Gentlemen, I repeat the exhortation; beware of conſtructive treaſon; it is a dangerous thing to admit into our tribunals; it is like the ſcythe of death, levelling alike the great and ſmall, the guilty and innocent: whoever reads its hiſtory will ſee war, famine and peſtilence; a dangerous diſeaſe without a medicine to cure it: beware how you eſtabliſh a ſyſtem in which your progeny, as well as yourſelves, are materially intereſted. If it were poſſible for poſterity to glance an eye on the proceedings of this day, no doubt but they would wonder, and await the important event with anxiety: It is putting your liberties into the hands of tyrants, if tyrants ſhould ever torment this country, to prevent which you are now called upon to eſtabliſh a rule for preventing injuſtice, ſhould injuſtice ever appear. Monteſquie ſays 4 Blackſtone 75

The reaſon of this is plain; it is the point made uſe of by a government when it becomes corrupt, and ſhould be diſpoſed, by taking advantage of its power, to injure the people. Where conſtructive treaſon is not allowed, there can be no ground for apprehenſion from that dangerous weapon. But we are told that by adopting the words of the ſtatute of Edward III, (which is not the caſe) we have admitted all the authorities of the courts of Great Britain. This I deny, we read the conſequences of ſuch a proceeding throughout the Engliſh books: See Keeling 7. Hale 134. 4 Blackſtone 75, 79, 80. When once this dangerous principle was introduced, the courts ſoon ran to enormous extremes: and ſhould you pronounce the priſoner guilty to morrow, it would be the eſtabliſhed law of the United States, ſo far as a jury could do it. But there is one thing worthy of your notice: the parliament of Edward III, from the experience they had, defined treaſon in as clear terms as they could, they did not know but new caſes might ariſe, in which caſe they provided what no honeſt judge could object to; they provided that if new caſes ſhould ariſe, the judges ſhould not call it treaſon untill the the parliament had determined it to be ſo; ſo extremely were they afraid of conſtructive treaſon that they would not truſt a judge, even if there was a ſimilarity to former caſes, nothing was to be left to conſtruction, or be called treaſon by the courts but direct levying of war. But the parliaments were ſo much under the crown that it could have been more ſafely truſted to the courts. However we are not bound either by the ſtatutes of Edward III, or William III, becauſe, as I ſtated before, they are not in force here, much leſs the deciſion of the judges or the parliaments under them: We muſt put a conſtruction upon our own ſtatute, alone confining it to the expreſs word of levying war. This is an important queſtion, and you are required to deliberate fairly and fully, uninfluenced in any manner whatever, but by your conſciences.

Judge Hale 1 p 131 makes diſtinction between expreſs and conſtructive treaſon: you will there ſee that the time when conſtructive treaſon began

and flouriſhed, was in thoſe dark, gloomy, troubleſome and bloody days, when England was drenched with the blood of her beſt citizens ; when the ſoil was enriched with their gore, and yet to authorities paſſed at ſuch times are we referred by the council for the proſecution, and upon thoſe authorities are we to place our Conſtitutional definition of treaſon. Enhancing ſervants wages was one of the caſes thoſe gentlemen relied on, and we admit that it was denominated treaſon to riſe for that purpoſe. Suppoſing that conſtruction was not pronounced by the king or by his judges, but by the moſt upright deciſion, how might it operate on this caſe? Why, we admit that wherever a body of men in arms go and ſurround the legiſlative or executive authority, to compel the repeal of a law, it would be levying war: the wages of ſervants in thoſe days was fixed by act of Parliament, and it could not be enhanced legally, but by an act to do it, and therefore any armed mob, going for the purpoſe of obtaining this object, is a treaſonable aſſembly, becauſe the object is to compel parliament to alter the law. Another definition referred to, is the pulling down incloſures, priſons, &c. generally. In referrence to that I would aſk if the one now before the court is not a new caſe? If it is not I am at a loſs to find a new caſe. It has even been held that any number of men aſſembled to reſcue any number of perſons, provided they did not go with a view of proſtrating all priſoners, and releaſing priſoners generally, is only a great riot. It is a new caſe in England, and it is ſo here, and therefore ought to be cautiouſly handled. 6 Hume 402. in the caſe of Lord Stafford.

I ſhall now proceed more particularly to ſtate my reaſons for alledging that the crimes with which the priſoner is charged are fully comprehended, and puniſhment provided for them in the Sedition law. This I ſhall conſider firſt, as it relates to the reſcue independantly: Secondly I ſhall make ſome obſervations on the law, independant of the reſcue, and thirdly, both together.

It is admitted, that the mere reſcue of the perſons from the cuſtody of the marſhal at Bethlehem, would not amount to treaſon, and it would not be neceſſary for me to ſay a word about that were, it not for the following reaſons. Speaking of pulling down meeting houſes, brothels, priſons, &c. the crime is defined : 4 Blackſtone 129, " offences againſt public juſtice, is obſtructing the execution of lawful proceſs." This, there can be no doubt, is an offence at common law, and perſons found guilty of a reſcue of a perſon convicted of a crime, is adjudged guilty of the ſame crime, and would be puniſhable accordingly, had it not been for our act of Congreſs, (the Sedition act) but that act reduces a reſcue, generally, to miſdemeanor. But agreeable to law, perſons reſcuing others not committed for treaſon, does not amount to treaſon. A caſe in 4 Blackſtone 86. the party himſelf was guilty of felony at common law by making eſcape, but I believe it to be an entire new doctrine to make the offence of the acceſſories or aſſiſtants higher than thoſe who are reſcued : Reſcue of perſons for felony has been always felony, treaſon, treaſon, &c. I think therefore it is clear to prove that every exertion has been uſed to attempt to make treaſon of this crime, by the gentlemen, but it is as clear that they have ſearched and tried in vain.

But it is farther ſaid, that this buſineſs aſſumed a generality, and that the object was to defeat a law of the United States, for which purpoſe a number combined and conſpired together, and more effectually to accompliſh this they reſcued the priſoners, and therefore committed treaſon. Were I to admit this I might call upon the gentleman to ſupport his concluſions by authority, to ſhow that preventing the execution of proceſs, or releaſing priſoners before they were carried to jail, is treaſon. I repeat that the only caſe mentioned is in the diſgraceful days of Henry VIII. which I think is inadmiſſible. But I deny the fact: I deny that there was any combination or conſpiracy between the people of lower Milford in Northampton county and thoſe of Bucks county at all upon the buſineſs. Firſt, the people of both counties were alike averſe to this law, and for ſimilar reaſons. I believe there are many unprincipled men who wiſh to injure their country, and go about preaching up ſedition to the people, which communicated in different directions, catch fire in the ſame manner, and perhaps at nearly one period; hence it is that their prejudices and oppoſition may appear from the ſame cauſe, without parties holding the leaſt correſpondence. I aſk you whether there is a tittle of evidence to prove that ever the priſoner went into Northampton county till this circumſtance occurred? was there any communication by writing, or any other way? no, not at all. Upon what foundation can a conjecture ariſe then, that there was a combination? You are not to try by conjecture, or wild ſuppoſition: No, you are ſworn to "well and truly try according to evidence." Does it appear, I aſk you to recollect, gentlemen of the jury, that he was inſtigated to this conduct by any intercourſe in any way held with Northampton county? No, it does not; but there is a ſtrong preſumption that the diſcontents took root and grew to that ſtate without any combination at all. But whether or not treaſon was committed in Milford townſhip, is not for you at preſent to ſay; the overt act is laid at Bethlehem, and there it muſt be proved, that he levyed war upon the United States with a number, or by force ſufficient for the purpoſe, and that with them he combined and conſpired, &c. If he did this at all, he did it on the 7th of March, for it does not appear that he ever was there before in his life; now if there was a conſpiracy, it muſt appear that he acted previouſly and in concert with others, and the act would have been alike chargeable to all; but this does not appear. It is true Fries was heard to ſay "we will oppoſe you, and all the people of "Northampton will join us," but this could eaſily ariſe from his having heard that the people of Northampton were diſſatiſied with the law, but it does not follow that, becauſe there were diſcontents in Northampton county, he ſhould be reſponſible for their actions, particularly ſince it all, at leaſt, depends upon conjecture. Keeling 19 has a caſe to anſwer this, where rebellion exiſted in two parts at one time, but it was determined that this might happen without correſpondence, ſince no ſuch evidence appeared, and therefore no notice was taken of it. Then, gentlemen, if I were for a moment to admit that John Fries had committed treaſon in Bucks county, which I deny, it would be immaterial upon the preſent occaſion, becauſe upon every

indictment for treaſon, the overt act muſt be proved in the county. But it is ſaid that doctrine does not apply, each ſtate being to the whole United States, as a county to the ſtate, becauſe the grand jury have the diſtrict at large to inquire for; and therefore it is immaterial whether laid in one county or the other. If this be ſound law, dreadful indeed muſt be the ſituation of the people of the United States, if the government ſhould ever fall into different hands from theſe in which it is now happily placed, becauſe an attorney may, at any time, keep a perſon, arraigned for a capital offence, in ignorance, till he comes to the place of trial, and of courſe not be prepared to repel it at a very diſtant place from where the act is laid. But this, I will be bold to ſay, cannot be law. My reaſons for thinking ſo are, Firſt, the law of Congreſs called the judiciary act, ſect. 29, vol. 1. page 67, ſays, that in caſes puniſhable with death, the trial ſhall be had in the county where the offence was committed:" here I would remark that the law takes notice, not of a State or a diſtrict, but of a county, and therefore the analogy drawn by Mr. Sitgreaves, that a diſtrict to the United States, is the ſame as a county to a ſtate, is not in point. The trial is to be had in the county unleſs the judges ſhall determine that it cannot be had there without great inconvenience, (See Foſter 194) but let the offence be where it may, twelve jurors muſt be ſummoned from the county, ſee 237 of the ſame book: if we examine theſe authorities they will appear different from what they were repreſented. 2 Hawkins C 46, ſect. 34, is an authority to prove that upon a plea of not guilty to a ſpecific charge as to place, &c. in an indictment, if the leaſt variance appears from that place, it is ſufficient to acquit the party, and is fatal to the proſecution. It is not neceſſary for me again to ſay that you are totally to exclude from your views whatever the priſoner did in Bucks county, ſince the charge is laid in Northampton, and ſince an acquittal from that charge will not prevent a proſecution in Bucks county. If it appears that no treaſon was committed by him on the 7th of March at Bethlehem, you muſt pronounce him not guilty.

Mr. Lewis then reviewed the teſtimony of Dellinger on the circumſtances which led to the expedition to Bethlehem, which he contended had nothing to do with it, ſave the *quo animo*. It appeared that they heard Shankwieler was to be there, but it is not pretended that going there upon that account would be treaſon, and particularly as Shankwieler was not in cuſtody, and it does not appear that the priſoner knew of any others being there at that time. Then the object particularly was to ſee Shankwieler. When they came to the bridge, it appeared to them that two men were detained at Bethelehem, and it ſeems they went forward to reſcue them. In this they were juſtifiable; for if the law was violated, it was by Major Nicholls, in making an arreſt which the law did not authorize him him to do. They were illegally detained, and it was lawful for any body to go and reſcue them. 2 Lord Raymond, 1301. I am not diſpoſed to blame the marſhal; but I cannot juſtify him in point of law: his ſituation, no doubt, rendered it a prudent meaſure; but it was detaining men by falſe impriſonment, and was enough to alarm all the people of the ſtate. I mention the circumſtance only to prove that there can be no reſcue, unleſs the perſons liberated are legally confined.

Inſtead of Fries being guilty for that action, a very worthy man (the marſhal) was guilty of aſſault and battery in the act of detention. If this is fact, how does the affair ſtand afterwards reſpecting univerſality and deſign? I have juſtified Fries and the others in leaving the bridge to go up to Bethlehem, and the laws of their country will juſtify them, becauſe it does not appear that they knew theſe people were diſcharged. When they got to Bethlehem, it appeared there were a number of perſons under arreſt; for, it does not at all appear in evidence that they ever heard before that Fox, Ireman, or the Lehi priſoners, were there: The gentlemen on the other ſide only preſume it; but you, gentlemen, muſt not go upon preſumption. "You muſt "well and truly try, and true deliverance make, according to evi- "dence." It does not appear they knew of it; they came from a great diſtance, and from quite another part of the country than where the Bucks county people came from; Fox and Ireman had been juſt brought in, and none of them knew they were there: however, when they were got there, *upon a lawful occaſion*, hearing of a number of perſons being confined there, and that they were to be taken to Philadelphia for what they conſidered to be no crime, they generally waxed warm, but Fries was cool, he endeavoured to pacify them: he had brought his ſword with him, but when he was appointed an embaſſador of peace to treat with the marſhal, he left it behind him.

The whole of the tranſaction muſt be viewed as a ſudden affray, like numerous caſes mentioned in Hale, Foſter, &c. where great and ſudden riots aroſe. Where is the proof, I aſk, of combination, of aſſociation or of correſpondence? None at all: they came there to a man without the leaſt treaſonable views, for it was merely by chance they came there at all. There was much rage among the people upon the firſt impreſſions, the knowledge of the priſoners in cuſtody made, and had it not been for the cool conduct of the priſoner at the bar, blood and maſſacre would have been the immediate conſequences, for no doubt liquor was operating pretty much in their brains. An altercation took place: they inſiſted on the priſoners, and in the proſecution of his delegation, from the preremptory demands of the people, he made uſe of language which I admit was unjuſtifiable, and violating the law, for which he ought to be puniſhed, but not with *death*. 1 Hale 153. But further: the perſons were not in priſon, they were only in cuſtody of the marſhal: theſe are materially diſtinct; the releaſing of perſons taken to priſon, is only a miſdemeanor while releaſing them after they are in priſon, which is in ſome meaſure the ſanctuary of the law, is felony: 4 Blackſtone 130. The breaking open of priſons generally is treaſon, but in no caſe is the releaſing priſoners before they are taken there. Keeling 75. 63. Lord Gordon's trial, Demarree's caſe 4 ſtate trials 844 and 900. It would not have been treaſon, therefore, if a number of perſons had actually conſpired to reſcue theſe priſoners from the marſhal, nor even if they had been confined in a gaol, inſtead of a room, becauſe it was not a general deſign to break open all priſons, but one only: but on the contrary they were not in priſon they were only in cuſtody of the officer who ſerved the proceſs; how then, in the name of reaſon and common ſenſe will it be made to

amount to treaſon when it would not, if they had been in gaol. But ſays the gentlemen, we will not call it reſcuing of priſoners, but a general obſtruction of the execution of the law, and the means here uſed was to ſupport that general object. The reſcue is of itſelf a ſpecific offence, and of itſelf admitted by Mr. Sitgreaves to be only a miſdemeanor. If it is ſo, how is it poſſible to convert a miſdemeanor into a treaſon, and thus to take away the life of a man when impriſonment only is his deſert! But what ground is there alledged for this poſition? It is ſaid that the arming and arraying a number of men was with this intent. I deny the fact, and it has by no means been proved. The caſes referred to in England are treaſon to a demonſtration. Enhanſing ſervant wages could not be done by force but by ſurrounding the parliament houſe, and this was juſtly denominated waging war againſt the king. Any riſing to alter religion muſt be effected the ſame way: Religion is eſtabliſhed by law in England, and that law muſt be altered by the parliament, therefore it could not be forcibly altered but by levying war. 4 Blackſtone 81. Reforming the laws muſt be done the ſame, if at all. 1 Hawk. C 17. ſect 25. ſee Erſkine in Gordon's trial 32. Not only open rebellion, but reſiſting the laws as enacted is treaſon. The laws are a proof of the authority of the commonwealth, and reſiſting thoſe laws is making the parties independant of the commonwealth, and therefore a defiance of the authority of the ſtate. Lord Mansfield in the charge on the ſame trial ſays, among other enumerations, that combinations, &c. to arreſt the execution of *militia laws* is treaſon. This ſtrongly merits obſervation. Why does the learned and experienced Lord Mansfield particularly ſpecify militia laws and no other? Why does he not ſay to arreſt the execution of any law? Why the militia law? For the beſt of all reaſons, the ſame reaſon as the taking or attacking a fort or a caſtle belonging to the king, becauſe that is the place where he keeps his military forces, and becauſe the military is the ſtrength of the kingdom, and this is reſiſting the military authority. Therefore it muſt be allowed that a reſiſtance of militia laws are upon a very different footing than any others, and in time of danger reſiſting this law would prevent the militia being drawn into the field when there is occaſion for them.

Now, gentlemen, theſe things all conſidered plainly ſhow that what is now attempted is a *novel experiment*, like modern philoſophy, an entire new thing, ſaving the ſolitary inſtance in the reign of Henry VIII, and it is clear that the reſiſtance of no law is treaſon, but the militia law. I agree alſo with the doctrine Lord Mansfield lays down that any attempt to oppoſe the laws by *intimidation* and *violence* is levying war, and treaſon.

It is unneceſſary for me to turn to the books to prove that confeſſion of the party, or words ſpoken by him, taken perhaps in the time of fear, are not to be regarded by you. This was ſo plainly improper, that the law of William III, making two witneſſes neceſſary, or confeſſion in open court, was enacted: I need only turn to our own laws (judiciary act.) There muſt be one of two kinds of proof: the party in open court muſt confeſs, for confeſſion out of court cannot avail even if made before 10,000 witneſſes: or elſe two witneſſes muſt prove

the ſame overt act, and he muſt be convicted upon that indictment, if any. If you are to go to all parts of the country for heated words, heard by any body, in any circumſtances, I muſt conſider it as a very ſcandalous abuſe of the ſtatute of Edward III. I think it impoſſible to heſitate at what was the meaning of Congreſs when they made this act, and therefore ſhall barely recur to the evidence.

Here is a proof, that the priſoner came up to Bethlehem, where he acted in a certain manner; but the gentlemen concerned for the proſecution, think that does not ſufficiently indicate his deſign, and therefore they travel to Jacob Fries's, to Kline's, and a number of other places: now ſuppoſe you convict him, I intreat you to inquire from what evidence you do convict him? Is it from the overt act committed at Bethlehem, or from that and other circumſtances together? If this is the broad ground upon which you go, do you convict him upon the evidence of two witneſſes, to the ſame overt act, tranſacted at the ſame place? No, you do it upon the evidence of two, and a number of other evidence beſides, on a variety of circumſtances. Let me ſuppoſe for a moment, that two witneſſes had come forward, and given an account of his conduct at Bethlehem, but that evidence was not ſufficient to anſwer the indictment: you hear of ſuch and ſuch conduct at Quaker town, at Kline's, &c. &c. I aſk, would he have been convicted upon the evidence of thoſe two independent of any other? No, he would not. This is by no means agreeable to the ſtatutes of William III, or Edward VI, and in my view totally inadmiſſible. What is the conſequence of ſuch a verdict? Why, a man charged with murder, aſſault or what not, may know who the witneſſes againſt him are, while one charged with treaſon, the higheſt poſſible crime, may not know, if you can travel from town to town, and from county to county for the evidence; if you can bring correſpondence, &c. from every part, of which the priſoner knew nothing until brought before the court. No man would be ſafe in the admiſſion of ſuch things, but you muſt form your opinion alone from the evidence of two witneſſes relating to the act committed at Bethlehem agreeable to the indictment. The ſtatutes, and our act of Congreſs mean and intend to prevent this kind of rambling over the whole ſtate for evidence, or indeed upon the doctrine of the gentleman, notwithſtanding the act ſays otherwiſe, they can with equal propriety go throughout the United States to collect evidence to ſupport the proſecution, which was never ſeen nor heard of before.

I now contend, gentlemen, that the caſe of the priſoner at the bar does not come within the ſtatute of treaſon; and I alſo contend that it does come within one of two other acts, for the judiciary act 22 and 23 ſections, page 109, vol. 1. ſpeaking of reſiſtance of proceſs and reſcue, compleatly extends to the priſoner. No, ſay the gentlemen, it is not a mere reſcue, but a reſcue for certain intentions and deſigns. Have the Congreſs diſtinguiſhed any particular deſign, or have they not in this law? No they have not: then permit me to ſay where Congreſs have not diſtinguiſhed it, nor the books, it is not for judges nor juries to diſtinguiſh: it belonged to Congreſs to make or except ſuch caſes as they thought proper, they have not thought proper; and you have no right whatever to do it.

But leſt any objection ſhould appear of weight to except it from the judiciary act, there is a very good law, but which has been ſhamefully villified and abuſed, called the ſedition bill, providing fine and impriſonment for any high miſdemeanor, under which, as I obſerved before, the very actions of the priſoner are defined. This act has paſſed ſince the trials of the weſtern inſurgents in 1794, ſo that the opinions of the judges reſpecting treaſon at that time, is moſt clearly and fairly ſuperceded by this act, which has pointed out, whatever has heretofore cauſed doubts about the meaning of treaſon in the ſtatute, and thus put an end to any judicial conſtruction. That act provides, that if any perſons ſhould combine or conſpire together, to impede the operation of any law of the United States, or to intimidate any perſons holding places or offices under the United States—This laſt, is one of the many little things collected together, in order, that when brought into a maſs, they may amount to treaſon—It goes on, that if they ſhould adviſe, attempt, or procure any inſurrection, riot, or unlawful aſſembly or combination, he or they ſhall be deemed guilty of an *high misdemeanor*. The very crimes which are here enumerated are charged upon John Fries, the priſoner at the bar: *whether it is carried into effect or not*. Now, if any act or deſcription can be more juſt than this, I ſhould wonder; it anſwers preciſely every part of the crime charged, and every concomitant circumſtance. Now the queſtion is, whether or not, as the conſtitution did not define the puniſhment of treaſon, and as a miſdemeanor is deſcribed here, to be what ſome have thought uſed to be levying war, and as the puniſhment is leſs, than what the other law reſpecting treaſon enacts; whether this ſhould not operate as a repeal of the former law, ſo far as related to theſe points. As to the caſes of Vigal and Mitchel, weſtern inſurgents, I ſhould doubt whether it would affect them at all, even if the law had then exiſted, becauſe the circumſtances very much differed from the inſurrection in Northampton county. Wells and Nevil were inſpectors, and their offices were ſtrictly belonging to the United States, and were depoſits of the United States, and equally under the protection of the law, with caſtles or citadels: in addition to this, the officers of government were driven from their own homes, and upon pain of death, they dared not approach their homes. Their offices were burnt by the inſurgents, and there was no law that touched their caſe but the conſtitutional act defining treaſon; on which account, they were tried and convicted under it. I would introduce theſe ideas, to ſhow you, that the deciſions then formed by the court, are inapplicable at this time, ſince the Sedition act is ſince paſſed, and agreeable to theſe circumſtances, which materially differ from thoſe of 1794.

It is now time to cloſe. Gentlemen, the taſk which you have to perform is very ſerious, and very important; but I will not inſult your underſtandings, by ſaying more than my indiſpenſible duty claims from me, in behalf of the priſoner. You will, I have no doubt, conſider the caſe calmly, wiſely, and deliberately. You know the law, under the direction of the court: and I have no doubt, you will decide according to the impulſe of your conſciences. I will only add, that the priſoner received, and has held his life from the authority of Him, who is all-wiſe great and good, and by Him only, can it be deſtroyed, except he has

violated those equitable laws made by his country for the preservation of peace and order in society: he is therefore entitled to an equitable verdict: if he has done the acts named in the indictment, I have no doubt, you will pronounce him guilty: if he has forfeited his life, go he must, and if he is to go, it is not in the power of men to prevent it. I shall therefore rest assured, that you will give a conscientious verdict, upon which you are bound to answer.

Mr. RAWLE.

AFTER his exordium, in which he expressed the importance of his situation as public accuser—he hoped that while his duty peremptorily imposed upon him, the necessity of doing justice to the United States, he should not be divested of candour towards the unfortunate prisoner at the bar, to whom he hoped full justice would be done.

He proposed in the first place to collect the detail of transactions, the clear and unequivocal train they had been testified by the several witnesses, not only called to support the prosecution, but unhappily for the prisoner, corroborated by the witnesses called by himself. In the second place he should apply these facts to the laws and Constitution of the United States: from both of which he thought it would evidently appear to the jury that the prisoner was guilty of treason in levying war against the United States.

The prisoner stood indicted for opposing in a warlike manner, two laws of the United States, the one entitled "an act providing for the valuation of lands and dwelling houses," &c. passed July 9, 1798, and the other entitled an act for levying a direct tax within the United States, passed July 14, 1798. agreeable to these acts certain commissions and assessors were to be appointed to carry the provisions thereof into execution. It appeared in evidence that Mr. Eyerly, one of the witnesses produced, had received a commission conformable thereto in a part of Pennsylvania, which he received in August, 1798, together with a request from the secretary of the treasury, that he would find suitable characters to serve as assessors to act in the division assigned to him. In the execution of this request Mr. Eyerly found very great difficulties, although there was a perfect acquiescence in all other parts of the union. Many whom he nominated declined on account of the unpopularity of those laws, although Mr. Eyerly very industriously, and in a praise worthy manner endeavored to remove those objections.

In order to show the general difficulties there was in the execution of these officers' duty. Mr. Attorney recited the testimony of Mr. Eyerly (page 47) and its confirmation by Mr. Chapman, Mr. Henry and others. He also went into an examination of the testimony demonstrative of the difficulties the assessors found in the execution of their duty and the insult they frequently meet with, when engaged in their pacific efforts to explain the law to the misled rabble.

But ſorry was he to ſay, that theſe commendable efforts were outweighed by the influence of certain leaders, among whom he found ſeveral captains of militia, and Fries with the reſt: he throughout the whole ſcene appeared the moſt prominent, and inſtead of attending to the good advices given him by his beſt friends, flew in a rage and renewed his oppoſition. A part of the effects of their hoſtility was accompliſhed in preventing Mr. Clark from fulfilling the office which he had undertaken, and the general reluctance there was in others, and indeed finally the abandonment of the aſſeſſments; for it appeared that, not only thoſe who were unwilling to give their rates, refuſed, but thoſe who were willing, were intimidated from doing it. To ſuch a pitch was intimidation and diſſaffection arrived, that he was ſorry to ſay, the very *Magiſtrates* of the peace had ſo far neglected their duty as to join the oppoſition, and nearly all of them, from one or other of theſe motives, refuſed to iſſue proceſs for the apprehenſion of delinquents, or examine perſons who oppoſed the laws: and thoſe who did attend to their duty, found the greateſt difficulties to procure the attendance of evidences, who were prevented by the impulſe of fear from coming forward. Many attempts were made to pacify theſe deluded people, who were under the moſt baneful advice, and the attempts accordingly miſcarried, even though propoſitions were made in ſome townſhips to indulge them with the choice of their own aſſeſſors.

Their town meetings were ſometimes attended by military bodies, in all the parade of war, with arms, muſic, and colours flying, who conſtantly employed the moſt violent and indecent menace towards the officers of the United States, which made even their perſonal ſafety doubtful. In this ſtate of things, the marſhal of the diſtrict was diſpatched to ſerve proceſs on a number of the violaters of the public peace, and having ſerved ſeveral warrants in Lehi townſhip, he went to Lower Milford, and thence to Millar's town, where the gentlemen who were with him, aſſiſting in the duty, met with repeated inſults and even perſonal abuſe. The aſſeſſors were ſtill unable to proceed in meaſuring the houſes, and finally obliged to abandon the buſineſs altogether; ſome of them having been compelled to reſign on account of the oppoſition they met with, and the threats which were thrown out, ſo that they were in actual danger of their lives if they had proceeded. While theſe officers were going the tour of their duty, in defiance of oppoſition, the principal leader, and indeed principal mover of the inſurrection, John Fries, makes a diſtinguiſhed figure upon the ſtage: he was not yet appriſed that they had proceeded to aſſeſs the houſes in his townſhip, as ſoon as he learnt that they had, deaf to the arguments and reaſoning of Mr. James Chapman, he flies into a rage, and exclaims, pointing to a man near him, "If I were to ſend that "man to my houſe to inform them that the aſſeſſments were going "forward, I ſhould have 700 men here by day light to-morrow, and "not only that, but we have men in Montgomery, and all Northamp-"ton county to join us." This, gentlemen, certainly evinces a general oppoſition to the law, as clearly as words can do it. When told tha the aſſeſſments were going on, it operated on him like an electric

ſhock, and he ſullenly retired having firſt adverted, with threats, to the melancholly ſcenes which has tranſpired in France. He afterwards meets the aſſeſſors at Jacob Fries's, to ſome of whom he expreſſes much reſpect, but certainly not very much like a friend or a neighbor, if we conſider the anger which he diſplayed. No; it was not friendly admonition, it was the mark of enmity in diſguiſe, and the ſpecial declaration of war: this will be evinced in obſerving the affair near the houſe of Singmaſter: (p. 71.) Fries, with ſome attendants, met three of the aſſeſſors, one of whom (Mr. Rodrick) they endeavored to ſeize. Fries was at the head of the band, but miſſing his mark, and taking Foulke he let him go, with a threat that they ſhould all be taken the next day: on the next day, when the aſſeſſors were to meet at Mr. Chapman's, Fries, and his party, met at Jacob Fries's, whence they march in military pomp to Quaker town to execute their threat. They ride up to the tavern, and there, after diſcharging their pieces, give an huzza to the much profaned name of *Liberty*. When the aſſeſſors came into the town, ſwolled with large drafts of guilt and whiſkey, the latter of which it appears that Fries kept clear of, but of the former he had a large portion. Seeing Mr. Rodrick ride through the town, they ordered him to ſtop, which he refuſing, the cry of *fire* was given. Mr. Rodrick did not know who it was gave the word, but they levelled at him. However, gentlemen, on the other ſide ſay, *they did not fire*. This is the kind of defence which is held up to you: if they had fired, perhaps it would have been ſaid, they did not hit; if they had hit, that they did not kill, and if they had killed, then it would have been only homicide! Mr. Foulke next came, he was ſtopped by a number, and among them Fries appears. So far as relates to the priſoner at the bar, it appears to have been his ſtudied object to abſtain from actual violence and outrage at all times; but his plans are regularly accompliſhed, notwithſtanding his ſeeming moderation; and from his attention towards Mr. Foulke, and ſome others, it was clearly proved that the *officer*, and not the *man*, was obnoxious. Fries had told Mr. Foulke the preceding evening that he would come to his houſe, and bring ſeven hundred men with him, rather than that the law ſhould be executed.

The oppoſition to the aſſeſſors, the general tranſactions of the 6th of March, and the reſolution they entered into to go and liberate the priſoners the next day, Mr. Rawle ſaid he conſidered as the beginning of the treaſon. On this day, (March 6th) the priſoner at the bar, the cool, deliberate leader and adviſer of this aſſembly, whoſe minds and meaſures were thoſe of their leader, in which he exhibited his power, particularly on the arrival of Mr Foulke, commanding him to get off his horſe, and come into the houſe, when he demanded his papers; but, on that gentleman making ſome demur, he broke out, ordering him not to heſitate, on which they are delivered up, and then it was he made uſe of the declaration, that they would not ſubmit to the law, till *the other states* had ſubmitted. "The law ſhall be repealed; we will not ſubmit," he ſaid: this we have from a reſpectable witneſs. When the papers were returned, it was with a ſtrict

injunction not to proceed in the aſſeſſments, accompanied with a bravado: "You may return me if you think proper." Having done this, there was another aſſeſſor who was to be alſo brought, and maltreated (Mr. Childs.) Fries goes to a neighboring houſe, and accoſts him in a friendly manner, telling him he muſt go and *see* his men. When arrived, he leaves him amongſt his men. It is unneceſſary here to recapitulate the orgies of that tranſaction, in which the venerable name of Waſhington was uſed by their profane lips: they even extend their madneſs ſo far as to call upon Mr. Childs to ſwear allegiance to them. Suffice it to ſay, that the whole period of his ſtay was filled with huſtling and abuſe; but being a robuſt man he was not hurt. When Fries returned they were quiet, and he expreſſed concern at the treatment, and inquired for the man who did it, but ſoon he makes a demand of the papers, which being given, he went out exulting at the acquiſition; mean while Mr. Childs was again ill uſed, and which again ceaſed on the return of Fries, who being diſappointed in their contents returns the papers. Mr. Childs, in this ſituation, does what any man would do, promiſes not to go into the townſhip again to aſſeſs, and the aſſeſſments were perfectly ſtopped in Lower Millford. If this had been a mere local matter; if no promiſe of aſſiſtance had been received, if no preconcerted, but unexecuted plan had not been deſigned, their labors might have reſted here, having accompliſhed their profeſſed purpoſe of effectually preventing the aſſeſſments going forward amongſt them; but their views were more hoſtile to the government, under which they were protected, and which was that moment extending its wings to ſhield them from aſſault, in common with their fellow-citizens. Their triumph was incomplete; "nothing was done, while aught remained to do" was their language; for, upon returning to the houſe of Jacob Fries, a meſſage was ſent by Dillinger, at a late hour, to give more general notice that next morning they were to go to Bethlehem in order to reſcue the priſoners. Shankweiler and others were named as the priſoners whom they were to reſcue. This, gentlemen, is an important proof of the ſyſtem with which this reſcue was conducted, in which it is clear the people of Northampton and Bucks were connected: thoſe people of Bucks were informed that certain perſons of Northampton had been arreſted by a Judges' warrant, and were to be taken down to Philadelphia; but, they reaſoned to themſelves, "If this is "permitted, our plan will fall through; our intimidation of the aſ- "ſeſſors will be at an end; they will proceed in their buſineſs, and "we ſhall not be able to carry our plan of defeating the law; we "ourſelves ſhall be taken next. No; Shankweiler, and all the others, "muſt be liberated." The meſſage is communicated; and with a view of holding to this ſteady purpoſe, all who were preſent, the priſoner at the bar drew up a writing, binding thoſe who ſubſcribed it to meet at Millar's town the next morning: What are the particulars of that inſtrument we are ignorant, it not having been produced to us; but, I am ſorry to ſay, upon his own declaration, that he never ſigned it: in this he appears to deſert his comrades, and leave them in a predicament into which he had led them; for, having gone ſo far,

they would not think of abandoning their plans. The next morning they met by appointment; their proceeding would then have been ſtopped by intelligence given them by young Marks, but on conſultation, the priſoner at the bar ſays, "No, we will proceed as we come ſo far." They proceeded until they came to the bridge.

During this period the Marſhal, who had been diſpatched up to ſerve warrants from the judge of the diſtrict, arrived, and after a variety of inſtances of oppoſition, as related by himſelf (p. 37) by Mr. Henry (p. 24) and by Mr. Eyerly (p. 45.) He was going forward in the execution of his duty as well as he was able, but being informed of the deſign which was formed to reſcue the priſoners who had promiſed to meet him at Bethlehem, by virtue of the powers deputed to a Sheriff, he procures a *Posse Commitatus* to aſſiſt him, on which account, owing to the generally diſſatisfied ſtate of the neighborhood, he was forced to ſend ſo far as Eaſton for ſome of thoſe aids. The next day the Marſhal was ready to receive his priſoners: two men armed then made their appearance.

Mr. Rawle here retorted pretty ſtrongly on Mr. Lewis's reference to 2 Lord Raymond 1301. adverting to the *falſe imprisonment* (as that gentleman called it) of Keifer and Paulus at Bethlehem, previous to the commencement of the general outrage, in which he recited the evidence reſpecting the arrival of thoſe two men, and juſtified the Marſhal for his prudent precaution to prevent the ſhedding of blood, becauſe, from his information, he appeared to be in a delicate and dangerous ſituation. I would rather, Mr. Rawle exclaimed, ſpend my life in voluntary exile on the bleak ſhores of Botany Bay, than live at large in a country where a Marſhal in the execution of ſuch an invaluable duty, ſhould be held up as an object of guilt: this is at once deſtroying all that we hold dear—our judicial ſyſtem, on which depends our ſecurity. The act was laudable, becauſe it was an act of perſonal ſafety and general prudence.

Mr. Rawle then proceeded to examine the evidence until the arrival of Fries at Bethlehem, contending that neither the arreſt of thoſe two men, nor that of Shankweiler particularly, who had never ſurrendered himſelf priſoner at all, was the cauſe of the aſſembling Fries and the party at Miller's town, their march from Milford, or their arrival at the bridge near Bethlehem: it was not till after their arrival at the bridge that the party were informed of the detention of theſe two men, when they ſent to demand them. They were liberated, but in order to beg this *armed force* to come no farther, the Marſhal diſpatches four of his *posse* to reaſon with them. But the object was not yet attained, for while theſe two men were delivering up, the Marſhal perceives the priſoner at the head of his party, with a ſword drawn, marching up with all the appurtenances of war, although the others had engaged to await an anſwer at the bridge. They appeared to be inſtigated to paſs the bridge by the arrival and example of Fries, and from that moment affairs aſſumed the awful ſpectacle which the Marſhal had been previouſly led to apprehend, and this John Fries who had obtained the rank of a Captain in the Militia, which he ought to have uſed ſolely to defend his country, proſtitutes his command to the baſe and dan-

gerous purpoſe of rebellion againſt the government. All the evidence agree that the only leader; the only diſtinguiſhed character; the only ambaſſador, negociator, and adviſer that appeared throughout the whole tranſaction was the priſoner at the bar: It is he that goes firſt to demand the priſoners: a recital of his conduct may be ſeen in Thomas's and Mitchel's teſtimony, corroborated by others. He declares, "Gentlemen, if you are willing *we will* take them, I will go foremoſt; none of you fire till they fire on us firſt; till I give the word; if I drop, then take your own command." To give him all the credit due to his humanity it is obſervable that he wiſhed to obtain his object by intimidation, but if it was not attainable by threats, force muſt be reſorted to. No doubt there muſt have been a moment when he attended to perſonal ſafety; as commander, and foremoſt man in a narrow paſſage, he muſt have fallen firſt, he had a very fair chance of receiving a blow or a bullet, and therefore that precaution for his men not to fire became indiſpenſible. The object of theſe inſurgents was not to commit murder, the priſoner is not charged with it, but to prevent the execution of the law, and this was to be obtained better without a loſs of life than with it, but the expreſſions of Wm. Barnet, reciting thoſe of the priſoner, were "Stick, Stab, and do as good as you can, as I expect firſt to get it."

Gentlemen, Treaſon may ſometimes, and indeed often does call into its aid the commiſſion of acts horrid and atrocious, but ſuch atrocities are not neceſſarily component parts of Treaſon. Actual homicide, deſtruction, or ſeizure of property may, and often does occur: if the Marſhal on that unhappy occaſion had ſtood out five minutes longer, I leave it to yourſelves, or to any diſpaſſionate perſon to judge whether *lives*—more than the life of the priſoner would not have been loſt, and ſtill the crime would have been but *Treason;* But that it did not arrive to ſuch an horrid ſcene we are indebted to the judicious conduct of the Marſhal, who acted *above all praise:* influenced by the advice of two of the neighboring magiſtrates, whoſe powers were inſulted and ſuſpended, and who muſt, with himſelf, have fallen a ſacrifice in the execution of their duty, he determines to make the ſurrender: "the reſcue, ſaid Mr. Horſfield, I conſidered was perfect, otherwiſe the deſtruction of human lives was certain: you are a ſtiff Officer. (to the Marſhal) When I ſee thoſe guns levelled at the window: when I hear thoſe ſavage ſhrieks, I now think you will be juſtifiable in giving up the priſoners." The Marſhal, after much heſitation, acted very laudably in giving them up without farther oppoſition. I grant that Mr. Eyerly and Mr. Balliot retired unhurt, but obſerve, gentlemen, they were not the object; the liberation of the priſoners, and thus preventing the Marſhal executing proceſs, was their only aim, and when they obtained that, they deſiſted from farther violence.

I might with propriety apply to this Treaſon words which were uſed for a different purpoſe by Pope,

"All are but parts of one ſtupendous whole:"

A general plan of oppoſition to the law was contemplated, and the releaſe of the priſoners was but one of the parts, if not of "one ſtupen-

" dous whole," it was of one *great system.* Having obtained their object, they retired from their ſucceſsful expedition, the trumpeter ſounding the triumphal blaſt before the conquerors, in defiance of the legal authority of the United States, and thus departed, we hear no more of them.

Theſe are facts;—not founded on the teſtimony of a ſingle witneſs, which is ſufficient to convict a man in common caſes; nor are they confined to the teſtimony of two witneſſes, which is all the conſtitution requires; but they are corroborated by numerous witneſſes, produced in order to remove every doubt from your minds as to the material facts of the crime. There is no caſe in our books more clear than the preſent, the evidence is ſo uniform, that even the ingenuity and talents of the priſoner's counſel have not been able to conteſt one fact that has been related; indeed the whole is ſo fair, that the moſt incredulous muſt be ſatisfied of the accuracy of the charge, independant of the confeſſion of the priſoner, which confirms the whole: it proves to a demonſtration that his main object was nothing leſs than to prevent the execution of the laws which all men are bound to obey.

Gentlemen, the counſel for the priſoner have endeavored to diminiſh the force of that voluntary confeſſion by telling you that no man can be convicted upon his own confeſſion out of Court, nor without the teſtimony of two witneſſes: the ſame arguments have been uſed to nullify the expreſſions which we have produced proof that the priſoner frequently made uſe of, from which we evidently diſcover his intention. I allow that no man ſhould be convicted for treaſon unleſs upon the teſtimony of two witneſſes, or confeſſion in open Court; but when all the facts neceſſary to ſubſtantiate the crime proved by two witneſſes, the declarations of the priſoner, as well as his confeſſion may be produced as good evidence as to his intention, and this is not neceſſary to be proved by two witneſſes; this tends to ſhow the deſigns of his heart, which can only be known to his Creator and himſelf. Theſe declarations ſhould be known to the Court, in order to diſcover the intention with which the crime was perpetrated. In the caſe of Lord Gordon, the words ſaid to have been uſed by him in the lobby of the houſe was not rejected by the jury becauſe it required two witneſſes, but on account of the improbability of a declaration having been publicly uſed which no more than one individual could be produced to prove. We have proved by two witneſſes that the overt act was committed by the priſoner, and have produced much corroborative teſtimony, in which we have not been confined to two, having heard it from twelve reſpectable witneſſes. If we have ſucceeded to prove the intention, it is ſufficient for the law, and if you believe the teſtimony, it indubitably ſubſtantiates the fact. *

I ſhall now proceed to conſider what is the law ariſing upon theſe facts, in going into the examination of which, I ſhall put out of the

* *Mr. Rawle, in the examination of the testimony, went more at length than we have thought it necessary to follow him, because no reference can be made to it.*

queſtion two objections, one of them only has been produced, the other having barely been alluded to, rather than held up.

A proclamation was iſſued by the Preſident, on which Fries did then go to his home, whereupon it has been argued that no inſtance can be produced to prove a proſecution being commenced for acts committed prior to the reading of the riot act in England, if the mob thereupon diſperſed, becauſe they had complied with the proclamation. It is right in part: if the people do not diſperſe, the remaining mob are guilty of felony: but I aſk the gentlemen has the defence been at all ſet up on the ground of compliance with the proclamation? In the riot at Drury Lane theatre by the footmen; and that which was held up in which the earl of Eſſex and others were engaged, many of the rioters did diſperſe in conſequence of the riot act being read, and yet were afterward puniſhed for the enormities they committed while they were there. Alike trivial is the objection reſpecting the undue appointment of aſſeſſors. It is ſufficient that ſuch a perſon acts as commiſſioner or aſſeſſor, if he uſurps that power the law has provided a remedy by other means than the dangerous one of an inſurrection to know merely whether A. B. or C. are regularly appointed to office. There are legal modes of application to aſcertain the fact; there is the whole board of commiſſioners, or even an higher power may be applied to, to aſcertain the authority, and no virtuous honeſt citizen would think of oppoſition on that account. We do not think it neceſſary to trouble the court, ſince it was fully in the power of the priſoner's council to have brought the commiſſioners under this act before them, but not having availed themſelves of it, nor preſſed it home to your notice, gentlemen, why was ſuch a ſcare-crow inſinuated, but to miſlead you? there can be no doubt of the legality of thoſe commiſſioners, if there was, it would not alleviate the crime of rebellion. But that was never uſed, neither by the priſoner himſelf, nor any of the inſurgents, as a ground for the rebellion; it was not even a colouring for it, nor does it appear that the inſurgents ever doubted in the ſmalleſt degree, the legality of the appointments, their declarations were repeatedly "no aſſeſſors ſhall act in the townſhip, nor ſhall any aſſeſſments be made." No doubt was ever made of the powers uſed by the officers, and therefore the oppoſition to the law is alone to be conſidered.

Having diſpoſed of thoſe two points, I wiſh now to impreſs upon your minds a moſt ſolemn conviction, to wit, That the law under which the priſoner at the bar ſtands indicted, without being in the leaſt doubtful, ambiguous, obſcure, or perplexing, is well defined in, and compoſes a part of the Conſtitution of the United States, art. 3. ſect. 3. It is certainly momentous that you ſhould be fully ſatisfied of the true meaning of that part under which the preſent crime is placed, to wit, "levying war againſt the United States." I would premiſe that the indictment is worded preciſely in the uſual form, and that the only queſtion now is, what is that levying war with which the priſoner is charged?

To aſcertain what is levying war, it is neceſſary for us only to conſider what is the nature of civil and political ſociety in the United

States. The government is the organ which the people collectively have thought it their duty and intereſt to eſtabliſh for their mutual ſafety—their will, publicly expreſſed in the laws, is the legitimate will of the majority of the people: all our laws are the acts of this majority, and it is a radical principle, which will not be controverted, that the will of the majority is always binding upon the minority, and ſhould be acquieſced in quietly by them, whether the adminiſtration of that government be in the hands of one perſon, or of many; thoſe, therefore, who do not chooſe to continue in that ſociety, ought to withdraw quietly from it, rather than diſturb the quiet of the whole. Allegiance is a quiet ſubmiſſion and acquieſcence to the ſupreme power—In monarchical governments it is placed in the king; but the citizens of America know of no allegiance but to the laws, for they alone are the binding principle by which ſociety at large is kept in domeſtic peace and ſecurity. If, therefore, deviating from this allegiance to the laws, meaſures are taken to diſturb the public peace by a reſiſtance of the laws, accompanied by force of arms, or by the intimidation of numbers ſufficient for the purpoſe, and it be applicable only to a grievance of a public or general, and not of a particular or private intereſt, ſuch reſiſtance then becomes the crime of *treason*, and particularly ſo if the views are to bring about the ſuſpenſion or repeal of *any* of the laws; for there is no particular kind of law liable to exception; it is treaſon, becauſe it is an attempt to overturn the fundamental principles of ſociety, by endeavoring to impoſe into the ſyſtem the will of a minority, which has no right to be there; it is creating a new agency, a new ſpecies of legiſlature, and eventually diſſolving the powers legally ordained. This definition may apply as well to any *one* law as to *all* the laws, for each is equally ſtamped with public approbation, and to none particularly is ſanctity attached, all proceeding from one power, thoſe who undertake to reſiſt *any* one, may with equal propriety reſiſt the whole, and treaſon appears to me to be the inevitable inference, otherwiſe it would be impoſſible to aſcertain the limits at which this dangerous licentious conduct muſt ſtop, we ſhould be at once thrown back into a ſtate of natural ſociety; which God prevent. I aſk the gentlemen who argued for this diſtinction, to point out to me which law may be reſiſted with impunity! If one may be, the evil principle will go on to another and another, and where will it ſtop!

I have no occaſion again to recur to the authorities we have produced which the gentlemen paſs over as the acts of bad times, corrupt judges, a profligate court, &c. The counſel with all their learning and induſtry ſeem to be ſatisfied with this general diſcharge of our authorities, but whatever might have been the baſeneſs of the attorney generals of thoſe times, the meanneſs of the judges, the profligacy of the court, or the merits of the priſoner, we ſtand upon broad eſtabliſhed, and general ground, which is not pretended to be obligatory upon us merely becauſe it has heretofore been decided, nor is it obligatory in England upon that account, although you have been ſo told, but we go upon it, becauſe it is *right*. That Sir Walter Raleigh was groſsly abuſed by Sir Edward Coke as notorious: it was the bad practices of

thoſe times, but this reference more regards the proceedings on trials, than the deciſions : the deciſions uniformly were, that uſurpation of *public* authority in a certain manner, amounted to Treaſon. What ! ſhall a man be permitted to attack the government by piecemeal ? to take out a plank here and a plank there, till our political ſhip ſinks, and ſuch conduct not be called a treaſonable diviſion of the government ! With reſpect to the authorities wherein it was ſtated to be neceſſary that the deſign ſhould be to pull down meeting houſes, brothels &c. *generally* in order to conſtitute high treaſon, it muſt be obſervable that it was the aſſumption of the *legal powers* which conſtituted the crime ; to pull down meeting houſes as ſuch, was interfering with the toleration granted by government, and therefore treaſonable. With reſpect to Bawdy houſes, government, and not individuals, have a right to correct them, and if individuals pretended to correct the evil, they were attainted of high treaſon.

We are told that no caſe is to be found in which a mere reſcue is called treaſon. Hale 133, in my opinion is an authority in point. Bethlehem was the priſon of the United States under the marſhal, there the marſhal held ſeveral perſons in cuſtody, and levying war, or attempting by force or intimidation to deliver thoſe priſoners out of his cuſtody is certainly treaſon. Here we ſtand upon ſettled ground we ſay, and I appeal, gentlemen, to your recollection, that there was no particular view to relieve any *particular* perſon, but that the words were " Shankweiler and others" the claim was general, and the object was general—the repeal of the law was that object, and theſe were the means uſed to obtain it. This is declared to be treaſon even by that great and virtuous man who is held up to your notice as guarding us to beware of introducing more conſtructive treaſons : Sir Matthew Hale, whoſe very name carried authority at the period of 1668, and with him, all the judges, upon mature deliberation, have declared this to be found law. As Burglary, Arſon and Murder may be made the means of treaſon, ſo may reſcue ; Treaſon muſt have ſome means : ſometimes the moſt atrocious, ſometimes the means may be newly invented, but becauſe newly invented it cannot leſſen the crime with reſpect to the murder of Sir Theodoſious Boughton, by capt. Donnelan in England, becauſe it was merely by a draught of laurel water (which in that country is poiſon)—a new invention for murder, the counſel might have argued againſt the conviction becauſe no former caſe had occurred, as well as that the innocence of this reſcue ſhould be held up, becauſe new. But there was no ſuch thing. A ſtrong and important part of the combination was actually carried into effect, and it was not abſolutely neceſſary to prove the reſcue in order to prove the treaſon : it has been evidently ſhown to you in the tranſactions at Quaker town, ſo that the reſcue was only a part, and the termination of the general plan ſo far as it proceeded.

I have no need to take up more authorities to prove that this is treaſon : it was ſo before the birth of our conſtitution : this principle was coeval with the reign of Edward III, in 1340. I take it to be a true and incontrovertible principle, that when we find an act, on which previous deciſions have been made, thoſe deciſions have been acted

upon, and we ſhould think proper to paſs that act by engrafting it into, and making it a part of our conſtitution, thoſe deciſions are of courſe adopted as our direction, whereby we are to underſtand the applications of that act. I would barely obſerve that while thoſe gentlemen are telling us that we are not to have recourſe to thoſe volumes of laws, (which we ought all to be acquainted with, as volumes of ſcience, explanatory of the code by which we are bound) they themſelves reſort to the ſame ſpecies of authority, to endeavor to prove that treaſon under the act of Edward III, is not treaſon in America. We have heard much about conſtructive and interpretative treaſon, and conſtructive levying of war. Agreeable to the form of government in England, the king is recognized as king in two capacities, one in his natural, as king, and one in his political, as ſovereign: now, when that part of treaſon called compaſſing the king's death is mentioned, it refers to his natural capacity, but when of levying war againſt the king, it refers to his political capacity, and it was therefore neceſſary to ſhow the diſtinction between different ſpecies of treaſon: this latter is termed conſtructive treaſon; but from the variety of its modes of introduction, cannot be ſo well defined; but its exiſtence is neceſſary in order to ſupport ſociety and preſerve it ſecure: this is what is termed levying of war; it may conſiſt in oppoſition to the king's forces, or by threats or force attempting to compel the king to remove his miniſters, or alter eſtabliſhed laws. If you expunge what is direct levying of war, there can no ſuch thing as treaſon be found; either the law is wrong, or the arguments uſed on the other ſide. Gentlemen, the law is eſtabliſhed, but the argument's vaniſh like vapour before the morning ſun; what, then, in England is called conſtructive levying of war, in this country muſt be called direct levying of war. The framers of our conſtitution were as learned, and as wiſe as any gentlemen now at the bar; they certainly ſaw that this was the only kind of direct of levying of war that could exiſt in this country, and therefore if they had not intended that what was called conſtructive in England ſhould conſtitute what they called "levying of war againſt the United States," they would not have introduced the crime at all: this is an abſurdity they never would have been guilty of.

The learned gentleman admits that reſiſtance againſt one particular law may be termed conſtructive treaſon, and may be the crime of treaſon here: he ſays that reſiſtance to the militia law would be a reſtraint upon the principle dependance of the government, and therefore treaſon; gentlemen try our arguments by this teſt, and ſee whether reſiſtance on the preſent occaſion is not equally ſo. I aſk you what is to become of the militia, the ſtanding army, the eventual army, or the civil power itſelf, if you are unable to raiſe revenue? Who will fight, who will tranſact your civil concerns if they are not paid? If by oppoſing revenue laws the government itſelf as well as the army is fundamentally undermined, is it not at leaſt as much treaſon as though the militia law alone were more openly (but not more effectually) attacked? Nothing is ſo much entitled to reſpect and ſubmiſſion as laws which are the direct means of keeping ſociety together. At the preſent time, when the feudal ſyſtem is no more, but from neceſſity ſubſiſtance muſt be obtained from

employment and labor, the defence and preſervation of the country muſt come from the revenue, and to deſtroy that is to give a mortal wound to the government itſelf.

Mr. Rawle then went into a review of ſome of the circumſtances, alluded to by the oppoſite counſel, which characterize the inſurrection, and the trials thereupon in 1795, which he inſiſted, though thoſe gentlemen would not allow it, were very ſimilar in circumſtances to the unhappy affair now before the court, in which he drew the following parity between the caſes:

In 1794, the diſturbance was to prevent the execution of one law—the exciſe law:

In 1799, the houſe and land-tax laws.

In 1794, four counties were engaged in oppoſition.

In 1799, but 3: Northampton, Bucks, and Montgomery.

In 1794, the exciſe officers were attacked and prevented executing their duty.

In 1799, the aſſeſſors were the ſame.

In 1794, the inſurgents collected into an army, in battle array, diſplaying their enſigns of triumph, with numbers ſufficient to procure their object; ſay, 6000 men in Braddock's field.

The object of 1799, was to do it in a ſimilar manner, and they actually did, by their military appearance and boaſts of much larger increaſe, impreſs a general opinion of their power, *ſufficient* to accaccompliſh their purpoſe.

In 1794, the inſurgents made public declarations that the exciſe law ſhould never be executed.

In 1799, were not declarations of the ſame nature made by theſe inſurgents; for that other counties, and even other ſtates would ſupport them, and it ſhould never be done?

The object of 1794, was to obtain a repeal of a law—the exciſe law.

In 1799, it was the ſame, ſo far as related to them—the houſe and direct tax.

In 1794, the exciſe offieers were compelled to promiſe, that they would not execute the law in that part of the country.

In 1799, the ſame promiſe is exacted, and obtained reſpecting Lower Milford and other parts. There was ſome difference, it is true, as the gentleman ſtated, ſome of the officers at that time being baniſhed from their houſes, on pain of death. It was farther argued, that there was this ſtriking diſtinction; that General Nevil's houſe might be conſidered as a caſtle of the United States, becauſe it was an office of exciſe; but the analogy ſtill holds good; it was General Nevil's dwelling-houſe, however, that was attacked; the attack was made only becauſe he was an officer employed in the ſuperintendance of a tax they diſliked: Mr. Levering's tavern at Bethlehem was made the priſon of the United States, and there was an executive officer of the United States, it was as much ſo as any other priſon in the Union: this was the caſtle, the fortreſs of the United States, to protect which the marſhal had aſſembled his *poſſe commitatus*, provided with weapons

of defence. I conſider this, therefore, a more violent breach of the law than the attack upon General Nevil's houſe; ſo far as it went—admitting that no guns were fired, nor lives loſt, nor was any houſe burnt, otherwiſe ſo far as it went the caſe was rather ſtronger than the former. Happy is it for the priſoners that the ſcene of riot was not farther from the ſeat of government: if it had been more remote from the power of government, we cannot calculate upon the conſequences, or increaſe of revolt and exceſs which would have been evinced. I will not pretend to anticipate them, for I wiſh not to inflame my own mind by the ſad calculation, nor the minds of the jury; I only wiſh the facts to appear in their native colours.

Why then can we entertain a doubt, viewing all theſe circumſtances, that the priſoner is guilty of treaſon? There can be none. We are told that the legiſlature have paſſed a law, entitled the Sedition Act, which ſhows the offence of the priſoner; and that the opinion of the legiſlature was to bring under this law the conſtitutional definition of treaſon, making it a miſdemeanor! To me, of all the weak arguments which have been brought in behalf of the priſoner, this is the weakeſt. This law, which has been cried up from one end of the continent to the other by ſome perſons as unconſtitutional, is now to be brought into court to explain away what the conſtitution poſitively defines to be treaſon. If this ever had been the intention of the legiſlature, there certainly would have been ſomething like treaſon, ſomething like levying of war introduced into that bill, but we find no ſuch thing; the words do not at all occur in it, and that it is not intended, I think is clear. Sedition and treaſon are two diſtinct crimes, and two diſtinct puniſhments are enacted to meet them. The deſcription of crime in the ſedition act, is thoſe who combine with intent to impede the operation of the law, and thoſe who intend to raiſe an inſurrection—theſe are to be conſidered as guilty of an high miſdemeanor. Now, thoſe who *conſpire* to commit treaſon are not conſidered guilty of treaſon; the treaſon muſt have been carried into effect. It cannot be treaſon for a man to counſel, adviſe, or attempt to procure inſurrection with intent to impede the operation of any law of the United States; but this is declared to be a miſdemeanor, whether executed or not. Beſides, the word "*treasonable*," is not inſerted in the ſedition law: thus, if a man be indicted for taking the property of another, unleſs the word *feloniously* is introduced, he is not liable to the charge. So in this caſe, the act muſt be traitorouſly done, or it is not treaſon. To ſhow the abſurdity of this doctrine, we need only for a minute ſuppoſe, that in the commiſſion of any of the crimes ſpecified in the ſedition act, lives ſhould be loſt, houſes burnt, &c. The laws of the United States have previouſly declared, that ſuch offenders ſhould be puniſhed with death, and ſurely it ought to be carried into execution—not be mitigated by a future law to the mere penalty of 5000 dollars, and five years impriſonment. If this was the intention of the legiſlature, might it not, at leaſt, be expected that they would have declared ſo in the act; but they have manifeſted no ſuch intention, in that, nor in the preſent inſtance, with reſpect to which, had they done it, they would have overleaped their conſtitution-

al powers; for the conſtitution is an ark, into which the legiſlature itſelf dare not place its feet; if they were to do it, the judiciary have the power, and it is their duty to bring them back again, and ſay, "You have gone too far:" They can as much reſtrain an unconſtitutional act, as Congreſs can make a conſtitutional act. This conſtitution gave Congreſs the power to declare the puniſhment that ſhould be inflicted on what it had defined to be treaſon. Congreſs had nothing to do with the crime, and if they have declared it, as the gentleman ſuppoſes, they have done it without authority, and it can be of no avail whatever. But no, they have rather, in the act alluded to, declared what ſhould not be conſidered treaſon, or removed doubts upon that head. This being the caſe, the ſame opinion which operated on the judges in 1795, is ſtill in force; becauſe no legiſlative act has intervened to change it. Certain it is, that Congreſs did not intend to enact an unconſtitutional puniſhment for treaſon; but if they had intended it, they have not a right to do it, nor have they done it.

Now, gentlemen, whether theſe things are as we have repreſented, or not, are for you to judge, and decide upon your information, if you are ſatisfied that the priſoner at the bar was engaged in the affair at Bethlehem, and that affair was connected with other previous arrangements, you muſt convict him, otherwiſe you muſt not. We conſider, and think the evidence muſt prove to you, that all are parts of the ſame whole, were began long before the 7th of March; and that they partly exiſted in Northampton and partly in Bucks counties. It muſt be upon a full conviction in your minds that the treaſon was committed by him in Northampton county, that you can convict the priſoner: and if you have not that full conviction, I firmly hope you will acquit him; if you have, you are bound to pronounce him guilty.

CHARGE OF JUDGE IREDELL.

GENTLEMEN OF THE JURY,

I AM perſuaded that every perſon, who has attended to the preſent very awful and important caſe upon which you are now called to decide, muſt be impreſſed with a juſt reſpect for the patience and attention you have ſhown, through the long period which unfortunately has been taken up; but this, though much perſonal inconvenience muſt have been experienced, not only by you, but by all concerned, is unavoidable; none of us can repent that, in a caſe of ſuch moment as the preſent, the time which is abſolutely neceſſary for a complete inveſtigation, has been employed.

Gentlemen, it is with great ſatisfaction to me, on the preſent occaſion, that my ideas on the points of law directing our concluſions, upon which it is the duty of the court to give opinion, abſolutely

coincides with that of the reſpectable judge, with whom I have the honor to ſit. Before I ſtate to you any obſervation, with regard to the facts which have appeared from the evidence, I ſhall previouſly deliver my opinion upon ſome points of law, ſo far as they are unconnected with the evidences; thoſe which are, I ſhall ſpeak to in their proper place.

This, gentlemen of the jury, is an indictment againſt the priſoner at the bar, for levying war againſt the United States; the firſt inquiry therefore is, what is meant by theſe words of our conſtitution. "Treaſon againſt the United States, ſhall conſiſt only in levying war "againſt them," &c. Theſe words are repeated verbatim, I believe, in an act of Congreſs, called the Judiciary Act, defining the puniſhment of the crime of treaſon, purſuant to conſtitutional authority. This crime being defined in the conſtitution of our country, becomes the ſupreme law, and can only be altered by the means therein pointed out, and not by any act of the legiſlature; and, therefore, the repetition of the words of the conſtitution in the judiciary act is quite unneceſſary, as the only power left to Congreſs over this crime was, to deſcribe the puniſhment: the ſame act, in another part, makes proviſion for the method of trial. Agreeable to their power, Congreſs have deſcribed the puniſhment, and thereby declared the crime to be capital. It is clear therefore, that, as the conſtitution has defined the crime, the Congreſs, drawing its ſole authority from that conſtitution, cannot change it in any manner, particularly as it is ſo declared; yet the counſel for the priſoner ſay, that the legislature have given it a legiſlative interpretation, and that their interpretation is binding on this court. They ſay that Congreſs did not mean to include the offence charged upon the priſoner at the bar, under the definition of levying war; becauſe the ſedition act deſcribes a ſimilar offence, and becauſe a reſcue is provided for in another act, the puniſhment extending no farther than fine and impriſonment. Several anſwers may be given to remove theſe objections:

Firſt, If Congreſs had intended to interpret theſe words of the conſtitution, by any ſubſequent act, they had no kind of authority ſo to do. The whole judicial power of the government is veſted in the judges of the United States, in the manner the conſtitution deſcribes; to them alone it belongs to explain the law and conſtitution; and Congreſs have no more right nor authority over the judicial expoſitions of thoſe acts, than this court has to make a law to bind them. If this was not an article of the conſtitution, but a mere act of Congreſs, they could not interpret the meaning of that act while it was in force, but they may alter, amend, or introduce explanatory ſections to it. In this we differ from the practice of England, from whence we received our juriſprudential ſyſtem in general; for they having no conſtitution to bind them, the parliament have an unlimited power to paſs any act of whatever nature they pleaſe; and they, conſequently, cannot infringe upon the conſtitution. The very treaſon ſtatute of Edward, III. itſelf, contains a proviſion giving parliament an authority to enact laws thereupon, in theſe words: "Becauſe other like caſes "of treaſon may happen in time to come, which cannot be thought

" or declared at prefent: it is thought, that if any fuch does happen, " *the judges fhould not try them without firft going to the king and par-* " *liament, where it ought to be judged treafon, or otherwife felony.*" On this point Sir Matthew Hale was very careful, left conftructive treafon fhould be introduced.

This, gentlemen, you will obferve, only relates to any cafe not fpecified in that act. But, on the occafion now before you, it is not attempted, by any conftruction or interpretation, that any thing fhould be denominated treafon, that is not precifely and plainly within the conftitution. No treafon can be committed except war has actually been levyed againft the United States.

But farther, nothing is more clear to me than that Congrefs did not intend in any manner whatever, to innovate on the conftitutional definition of treafon, becaufe they have repeated the words, I think, verbatim in their own act, with regard to the refcue and obftruction of procefs which is mentioned in the act alluded to: it will not be pretended, by any man, that every refcue, or every obftruction of an officer in ferving procefs, or even both together, amounts to high treafon, or elfe to no crime at all: No; the crimes are differently fpecified, and refcue or obftruction of procefs may be committed without that high charge. This, I think, was fufficiently explained by the counfel for the United States. Suppofe 1000 men rife in arms, avowedly to deftroy the government, and in the execution of their defign commit murder, burn houfes, purloin property, &c. does it make the defign lefs evident, becaufe they committed other atrocious crimes in order to obtain their main views? No; it was to deftroy the government, and that crime would be charged upon them, being the higher crime, which the concomitant ones only tended to aggravate, as they were committed, not for the purpofe of committing murder, but to intimidate the government, and accelerate their object. With regard to what is ftated in the fedition act—*combinations and confpiracies to raife an infurrection*,—thefe, gentlemen, may be committed without the parties being guilty of treafon: men may combine and confpire for a private purpofe; poffibly to injure an individual, merely to gratify fome private motive: if fo, they come within that act, and that only. It is only when they carry their projects farther; when they aim at the deftruction of the government, that the nature of the offence attains the afpect of, and effentially becomes *treafon*; and therefore it is neceffary to prove the *intention*, otherwife there can be no treafon. There can be no levying war without a number of perfons unite, and that number cannot levy war without fome previous intention; and therefore under this law, there being no previous intention defined, but merely an unlawful combination, the act termed *treafon* in the conftitution, it is plain it is not intended, nor is it of the nature of treafon.

With regard to the authority from which the opinion of this court is founded, and of which you have heard much already, I fhall trouble you with a very few obfervations. When this conftitution was made, it was in the power of thofe who formed it either to define treafon or not, or, if they thought proper to do fo, to do it in what

manner they chose, in which they might have followed the example of the country whence their ancestors came, to which they were accustomed, and in which they were most experienced in their own several states, where the crime of levying war was denominated treason. I believe this has been generally followed through the states; in some I know it has. This term of levying war is an English expression, borrowed from the statute of Edward III; but notwithstanding this, the principal provisions respecting treason are taken from an act of the British parliament in the reign of William III, which is principally calculated to guard the independence of the court against the power of the crown, and the prisoner against his prosecutors. Now, I must confess, as these able and learned framers of our constitution borrowed the act, in terms, from the British statute alone, an authority with which they were familiar, that they certainly at least meant that the English authorities and definition of those terms should be much respected. Those gentlemen knew as well as any counsel at the bar, the danger of constructive treasons: they knew how to guard themselves against the bad times of English history, and were equally acquainted with the better, and more modern decisions. Would it not have been natural for men so able, so wise, so cautious of their liberties, had they entertained a doubt of their insufficiency, to have introduced some new guards, some new interpretations, and not to have left us in later times in the dark, exposed to so much danger as the gentlemen of the bar apprehend? Gentlemen who know any thing of that country, know that arbitrary times have existed, and also that a number of decisions have taken place since that period. I do not believe that any judge since the revolution in England have ever considered that he was bound to follow every arbitrary example of the English courts, or the crown laws which had taken place in dark ages. Can any man suppose that, if a man was to be prosecuted for either of the crimes referred to by one gentleman (Mr. Lewis) so absurd a prosecution would be for a moment indulged by the judges of this age. No, they would highly resent such an insult offered to an enlightened court. Such instances have ever been reprobated as much by the courts, as by the gentleman who quoted them.

With respect to this doctrine of precedent, I will take the liberty of submitting to you a case of a civil nature; suppose it a case of great moment; suppose in this court, or any other from which an appeal could not be had, a solemn decision had been had respecting a title to a piece of land; upon this adjudication a gentleman wishes to purchase this land, taking this title to a lawyer he is confirmed in the opinion that the title is good, and that he is safe *because of the decision of the court.* On the faith of this decision alone the man lays his money out, and therefore it must be important how precedents are formed. If precedent is so important in a civil case, how much more so must it be in one like the present. If a case is new altogether, and no precedent can be found, it ought to be much in favor of the prisoner, but if a solemn declaration has once been made that such and such facts constituted a certain crime, that declaration ought to

be abode by, and for this plain reaſon: every man ought to have an opportunity to know the laws of his country (if he will take pains to inform himſelf) leſt he ſhould involve himſelf in guilt ignorantly. The propriety and neceſſity of this muſt be manifeſt, and if ſo, it is as neneſſary that the proceedings of our courts ſhould be uniform, otherwiſe their can be no dependance upon their judgment. If, therefore, a point has been ſettled in a certain way, it is enough to direct any court to ſettle a future caſe of a ſimilar kind in the ſame way, becauſe nothing can be more unfortunate than when courts of juſtice deviate in deciſions on the ſame evidence.

This leads me, gentlemen, to point out to you a conſideration of great magnitude: this is not the firſt time, as I have been informed, that theſe queſtions have been diſcuſſed in the court. During the trials of the perſons concerned in the weſtern inſurrection, they were diſcuſſed, and I have no doubt with great ability on both ſides. Judges Patterſon and Peters were then on the bench, and after all the diſplay of ſplendid talents uſed in argument on both ſides, and all the authorities produced that men were capable of, from the beſt judgment that could be formed, the court, without heſitation, declared itſelf in favor of the proſecution. As I do not differ from that deciſion, my opinion is, that the ſame declaration ought to be made on the points of law at this time. Vide Dallas's reports 355.

It is, however, objected, that after this ſolemn deciſion had taken place, the Legiſlature, by the ſedition act, ſettled the matter differently, and that we are bound by that act. This has been anſwered, ſo as to remove it beyond all doubt, and conceſſions were made at the bar ſufficient to remove the ſerioufneſs of this objection out of the way. It was acknowledged that if it had been an oppoſition to the militia act, then the crime would have been treaſon; or if it had been done to compel the repeal of an act, it would have been treaſon. For my part, I cannot perceive what kind of ſanctity there is in the militia act more than any other, that ſhould make any oppoſition to that act *particularly* ſerious: all the acts of congreſs flow from the ſame authority, and all tend to the ſame end, to wit, the happineſs and ſecurity of the community: individuals may differ in their views of the magnitude of them; ſome may think the militia law, ſome the revenue law, ſome another, but the Legiſlature have thought all theſe laws equally neceſſary, and they having thought ſo, it is our duty to obey them all alike. But, if the oppoſition to the militia law, by force of arms, is to have this extraordinary ſanctity, becauſe it ſtrikes immediately at the exiſtence of the government, then I ſhould be glad to know what can be ſaid about a revenue law? Government cannot exiſt a day without revenue to ſupport it! Farther: oppoſition by force to one law, is of the ſame nature as oppoſition to all the laws; the offence is levying war againſt the government; oppoſing, by force of arms, an act of congreſs, with a view of defeating its efficacy, and thus defying the authority of the government, is equally the ſame in principle, if done in one inſtance, as it could be in many. In monarchical governments it will ſometimes happen that a rebellion breaks out in an endeavor to deſtroy one monarch, and ſet

another on the throne: in such a case the treason plainly and unequivocally displays itself, and there can be no doubt about it; but this cannot occur in a republican form of government: men are seldom found who will be guilty of such open treason, as to come forward, in the face of day, and declare their design to destroy the *constitution* or *all* the laws. No, if men of sense go to promote insurrection, whether they mean to destroy the government or not, they must be wicked; they go about their design by more insidious means, art will be used, and pains taken to promote a dislike to a certain law, this evil prejudice is encouraged until it becomes general among the people, and they become as ripe for insurrection as in the present case. Nor would the evil cease with the destruction of one law: they may declare they mean to stop at that one act, but having destroyed it, and finding their power above that of the government, is it not to be apprehended that they would destroy another, and another, and so on to any number they disapprove of: if they would not be particular in one case, they would not in another. During the western insurrection the excise law was unpopular: in this case it is the house tax act, and if this is permitted, it will be impossible to know where we can rest secure, nor how soon the government itself will fall a prey. This reason may account for the introduction into the English statute book, and our constitution, with the determination of the courts in both countries, of the principle that an attempt by force and violence to impede the operation of a single act shall be treason, and under the description of levying war, as much as what shall at first appear more dangerous, since the effect may be the same.

There is another preliminary point, meriting a few observations, that is with respect to the proclamation of the President. It was contended that, because that proclamation required the people to disperse, and commit no more crimes, it amounted to a pardon of all they did before. It is sufficient to observe here, that had this objection been seriously made, a plea of pardon upon the ground of that proclamation must have been preferred, or it could not have been admitted. But the plea was not made, nor if it had, would it have been effectual, because, if this did amount to a pardon, it did so only on certain conditions; the attorney of the United States and the party are both allowed to show whether or not the prisoner has complied with the conditions of the pardon. It is possible also that the pardon has not been offered in such a manner as the constitution permits, in which case the attorney must be permitted to put in a demurrer. Of the force of these objections the court are to decide, and of course the plea must be referred to them.

Again, this pardon might have been pleaded in due season. Of this the counsel for the prisoner were informed, and had time to consider, but they did not choose to avail themselves of it. But if it had been proposed, nothing is more clear to me than its insufficiency; for in my view, the proclamation contained no pardon at all. The circumstances which gave rise to, and the nature of the proclamation, ran thus: Certain information was received by the government of a

disturbance having broken out in that part of the country, which baffled the power of civil authority, but as it is necessary to prevent any insurrection with as little trouble as possible, after inferior means have failed, the law provides that the President shall make proclamation, inviting and commanding such disturbers of the public peace to disperse in quietness to their homes by a certain time: this must be done before the military can be ordered out against them. This is in order to prevent more people joining the standard of rebellion afterwards, and to admonish others not to commit farther crimes, but there is not a word in the proclamation implying an offer of pardon for any thing committed before.

The riot act of England was cited in support of this doctrine, but there is no similarity in the two cases: that act says, a magistrate shall go to the mob, and endeavor to prevail upon them to disperse, if he cannot do it, he reads the act, and if they still continue combined, they are guilty of felony, but then this felony is a crime created merely by that act, but even that act does not intimate that they should be pardoned for crimes committed before the magistrate came, even if they do disperse. Instances to the contrary might be cited.

Having now, gentlemen of the jury, stated my opinion in the best manner in my power on the law, independant of the facts, or the particular application of that law to the prisoner at the bar, I shall, agreeable to my duty, state to you in the best manner I am capable of, the nature of the issue which you are now called upon to determine. It is an issue of an aspect the most awful and important that any juror can ever be called upon to determine. It is your duty to divest yourselves of all manner of prejudice and partiality one way or the other. Dismiss from your minds as much as you can all which you might have heard or thought on this case before you came into this court, and confine your opinions merely to the evidence which has been produced. No extraneous circumstances whatever ought to have the least weight with you in giving yourverdict: you ought not, and I hope you will not take into your consideration at all whether the safety of the United States requires that the prisoner should suffer, on the one hand, or whether on the other, it may be more agreeable to your feelings that he should be acquitted. It is solely your duty to say whether he is guilty of the crime charged to him or not. No man can conceive that the interest of any government can possibly make it requisite to sacrifice any innocent man, and I can rest perfectly satisfied, which I have no doubt you also are, that this government will not, and God forbid any considerations whatever should ever influence such an action.

I do not think it necessary to go into a minute detail of all the evidence which have been produced, it would be only mispending time. The general scenes which passed at Bethlehem must be fully in your mind; these scenes are supported upon the evidence of twelve witnesses, but I think it my particular duty to bring to your recollection those parts of that transaction in which the prisoner at the bar was concerned, leaving the rest as much as possible out of view. On

this occaſion I muſt requeſt the gentlemen of the bar, if in any inſtance I ſhould err in ſtating the evidence, that they will correct me; but I ſhall endeavor to be accurate.

The judge here ſtated the prominent features of the evidence given by Meſſrs. Henry, John Burnett, William Barnet, Winters, Col. Nichols, Schlaugh, Horſefield, Eyerly, Toon and Mitchel, ſo far as related to the conduct of the priſoner at Bethlehem, which, he ſaid, he thought proper to ſtate firſt, becauſe the offence charged in the indictment was ſaid to be committed at Bethlehem. Gentlemen, he continued, if you are not well ſatisfied that the overt act of *treason* was committed at Bethlehem, and that that overt act is ſupported by the evidence of two witneſſes at leaſt, you will not find the priſoner guilty.

Now, gentlemen, is the proper time for me to ſtate one or two points concerning the law of evidence, of which you have heard much from the bar. As I obſerved, there muſt be *two at least* to prove that the act of treaſon was committed at Bethlehem. It is the opinion of the counſel for the priſoner that you muſt be convinced, not only of the fact by two witneſſes,—not only that he was concerned in a certain act, but that you muſt have the evidence of two witneſſes, at leaſt, by evidence drawn from the ſame place, that it was done with a treaſonable intention, before you can pay any attention to any other evidence whatever. The fact is, that when the overt act is proved by two witneſſes, it is proper to go into evidence to ſhow the courſe of the priſoner's conduct at other places, and the purpoſe for which he went to that place where the treaſon is laid, and if he went with a *treasonable design*, then the act of treaſon is concluſive. In this I am ſupported by a very reſpectable authority on crown law: Foſter in the caſe of Deacon, from which it appears that it is enough, to prove that a rebellious aſſembly of armed men were there, and that the priſoner joined them. In order to prove to you fully the deſign with which the priſoner went to Bethlehem and joined in this great outrage, I ſhall ſelect ſome of the evidence reſpecting thoſe previous tranſactions; it is not neceſſary to ſtate the whole.

The judge here read the evidence of James Chapman, John Rodrick, Cephas Childs, and William Thomas reſpecting the conduct of Jacob Fries, on the 5th of March, and reſpecting the meeting with Foulke and Rodrick near Singmaſter's; and alſo the tranſactions of the 6th, at Quaker town which evidence he ſaid ſo confirmed each other, that no doubt could be entertained.

We now come to the confeſſion of the priſoner, voluntarily made on his examination before judge Peters. Here is a point of law relied on by the priſoner's counſel—that no man ſhould be convicted of treaſon but on the evidence of two witneſſes, *or upon confession in open court*. This is the proviſion in England as well as here, and the meaning is, that no confeſſion of the priſoner, independant of two witneſſes, or without the facts have been eſtabliſhed by two witneſſes, ſhould be ſufficient to convict him: but if two witneſſes have proved a fact, the confeſſion of the party may be received by way of confirmation of what has before been ſworn to. In former days in Eng-

land it was allowed that confeſſion out of court and the proof of the witneſſes ſhould be ſufficient to warrant a conviction; but happily our conſtitution would not admit it, if an hundred would ſwear to it, that danger is wiſely avoided. Inſtances enough are in the recollection of the court, of a civil and criminal nature where confeſſions have been received, but the jury are to judge from other evidence how far that is to be regarded.

Evidence may ſometimes be given which may be doubtful, and wants corroboration; you will judge whether that is or is not the caſe at preſent. But if the confeſſion of the priſoner ſhould go to confirm the evidence, if ſworn to by two witneſſes at leaſt, it may be received, but unleſs it does go to corroborate other teſtimony, I do not think it admiſſible. You will conſider whether any part of this confeſſion has not before been proved by two witneſſes: if it has, it goes to corroborate what they ſay, if it has not, you are to diſregard it. I think there ought to be great caution in receiving, as evidence, a confeſſion which any man makes himſelf, becauſe it poſſibly might be obtained from him by artifice or intimidation, with reſpect to this confeſſion, you have the teſtimony of my honorable colleague, judge Peters, that he gave the priſoner deliberate warning, that he was not bound to convict himſelf, and that no intimidation was uſed. Whatever objections, then, there may be as to confeſſion in general, it does not apply in this caſe, becauſe it was voluntarily given.

The priſoner on his part introduced ſome witneſſes, thinking they would be favorable to him: one of them appeared to be ſo in his teſtimony, which I ſhall endeavor to relate, the other three did not anſwer his expectation [The judge related the evidence of John Jamieſon.]

With regard to the point of law ſtated reſpecting the ſufficiency of the warrants, the evidence to this fact ſhows the general diſpoſition of that part of the country to reſiſt the execution of the law, and prevent it by force or intimidation; our means of ſhowing that, is their conduct towards the aſſeſſors. Thoſe who were appointed to that office, ſo far as they had it in their power, ſhowed a depoſition to act as ſuch. It is contended that their warrant ought to have been produced. With reſpect to the blank commiſſion which there was a ſuſpicion was unlawfully filled up, there ought to have been the books produced, but it was not material. This indictment it will be obſerved, is not for any reſiſtance to the aſſeſſors, or obſtruction of them in the diſcharge of their duty. I ſuppoſe it is not neceſſary to ſhow that theſe officers were *de facto* engaged in the execution of the law; that they were conſidered as aſſeſſors, and no ſuſpicion ever was entertained but that they were properly authorized to be aſſeſſors. This doubt if there was any, could be removed by reference to a very reſpectable authority. It was ſufficient if the warrants, given under the ſeal of the commiſſioner, were produced to the court.

The honorable judge entered pretty largely into the examination of the objection reſpecting Mr. Foulke's appointment in the place of Mr. Clarke, which he contended was not material, ſince the warrant was filled and he acted under it.

With reſpect to another point of objection ſtated at the bar, that the marſhal in detaining the two men at Bethlehem was liable to an action, he ſaid that under the circumſtances of that period he could not, becauſe, under certain circumſtances, he was warranted to call out the *posse commitatus* i. e. the power of the county, to aſſiſt him, if he was likely to be overpowered: it could not be preſumed that the circumſtance did not empower and warrant him to call them out, and therefore we may conclude that danger was really to be apprehended, and thoſe apprehenſions muſt be heightened by the arrival of thoſe two men in arms. In the opinion of judge Henry, who was preſent, the danger was ſuch as to juſtify the act of detention of thoſe two men. Was it with a view of depriving theſe men of their liberty? No, but ſuppoſing them to become with intent to aſſiſt in the reſcue which they acknowledged they had heard was contemplated.

Gentlemen, in looking to the law on this point, I do not think it is encroaching at all upon the liberty of any man to take him in cuſtody: an officer in ſuch an action muſt be at his peril, and could only be juſtified on the exigency of the circumſtance: if he did it unneceſſarily, a jury would teach him to take care how he ſported with the liberties of his fellow citizens; but ſuppoſing, from good evidence that he was in danger of aſſault, if he waited the United force of the aſſailants, ſhall it be contended as unreaſonable, that the marſhal ſhould take meaſures of ſelf-defence while it was in his power, and detain what he might reaſonably ſuppoſe a part of them? He ſurely acted the part of a prudent man, and was juſtifiable in the act.

Before I diſmiſs this general ſubject, I think it an indiſpenſible duty which I owe, to declare that, excepting the ſingle inſtance, wherein I do perceive ſome impropriety of conduct, in the filling up the blank, commiſſion, what has been diſcloſed in the courſe of this examination of the conduct of the commiſſioners or aſſeſſors, has reflected on thoſe officers the greateſt honor: at the ſame time they acted with induſtry, fidelity, and firmneſs, in the diſcharge of that duty they did all in their power to make it eaſy to the people, accommodating themſelves to endeavor to give full ſatisfaction, undeceiving the deluded, and removing the errors which the people had fallen into. If the people ſtill continued in ignorance and oppoſition, thoſe gentlemen acquitted themſelves of blame, and their conduct merited high praiſe.

As to the plea of ignorance, the law ſays ignorance ſhall excuſe no man, otherwiſe, how could it be poſſible to prove whether a perſon knew the law or not: if ignorance could excuſe a man of crimes, no crime would be brought to juſtice, or there muſt be, what is not to be expected, ſome ſelf-evident proof of the guilt. A compleat knowledge of the laws cannot be expected to find every corner of our country; but thus much we may ſay, to remove thoſe kinds of excuſe; if a man does not know when a law is paſſed, he knows how to obtain that information, and the law itſelf; for if he cannot come to Philadelphia, or ſome other town where they may be purchaſed himſelf, he has opportunity of ſending from time to time. But in the preſent caſe any doubt could have been removed by application to the aſſeſſors, who were ever ready and willing to ſhow the law, and therefore no plea of ignorance can poſſibly be ſet up.

Having ſpoken in commendation of the conduct of the commiſſioners and aſſeſſors, perhaps it is alſo my duty to ſay that the conduct of the marſhal has been equally exemplary: he did every thing in his power, by fair and honorable means, to avoid going to extremity, and as long as he had a hope of retaining his priſoners, he diſplayed a degree of courage which few men would do; he even offered to expoſe his life to this armed mob, by proceeding with the priſoners to Philadelphia, which he would have done but for the advice of three or four gentlemen with him, who thought it madneſs to proceed. He accordingly deſiſted, and in the event delivered up the priſoners.

This trial has laſted ſo many days, that we muſt be all very much fatigued; and I declare, gentlemen, I have ſcarce had power to examine the various points with minute attention, much leſs to prepare ſo proper a ſtatement of them as I intended to have done; the fatigue I have felt many nights at going out of this court has prevented me doing it: under theſe circumſtances I have no doubt of your excuſe, which I ſhall the more readily meet, ſince your fatigue muſt alſo be very great.

Gentlemen of the Jury. The occaſion is undoubtedly the moſt awful and important that ever could ariſe in any country whatever: the great queſtion for you to decide is, whether the priſoner has been guilty of levying war againſt the United States at Bethlehem, in the county of Northampton, as charged in the indictment, or not—in order to diſcover the nature of his conduct, you muſt examine into the motive with which he went to Bethlehem: it is neceſſary for you to examine the whole of his previous actions relating thereto: if it ſhould appear to you that the priſoner formed a ſcheme, either on the way or at Bethlehem, by any kind of force to obtain this object, then, in my opinion, you ought to declare him guilty of the charge laid in the indictment. On the contrary, if you think he had no public and evil motive in view, he is not guilty of the crime.

Before I diſmiſs you, gentlemen, I would remind you of one conſideration which muſt impreſs your minds: a great and important end of bringing perſons guilty of public crimes to juſtice is to preſerve inviolate the laws of our country: men who commit crimes ought to be puniſhed, otherwiſe no ſafety nor ſecurity can be had. On the other hand, it is of conſequence, that no man's life ſhall be taken away unjuſtly; if a man is not guilty of a crime, he ought not to be puniſhed for it; and it cannot be for the intereſt of the country to put a man to death for what he has not committed: therefore you are not to regard the conſequences, but determine merely by the facts in a manner for which you will be anſwerable at a future day, as well as myſelf, for all the conduct of our lives, as well as for the verdict you now give.

Mr. Lewis ſtated a queſtion to the court, whether the overt act laid in the indictment in a certain county, muſt not be proved to the ſatisfaction of the jury, both as to fact and intention in the ſame county, or whether the overt act did not include both fact and intention. To which judge Iredell replied, that he conſidered Foſter's crown law as ſettling that point—when two witneſſes are produced, which proves the overt act laid in the indictment, there might be then evidence

drawn from other countries reſpecting the intention: this is the opinion of judge Foſter, and it is my opinion. But there is another thing: it goes to a point which is inadmiſſible; it is not for the court to ſay whether there was a treaſonable intention or act as charged in the indictment; that is for the jury to determine; we have only to ſtate the laws, we therefore ſhould have no right to give our opinion upon it. Again, if no evidence could regularly be admitted out of the county until both the fact and intention were eſtabliſhed where the crime is laid, the conſequence would be, that there ought to be ſome way of taking the opinion of the jury, whether they believed that the crime was committed at Bethlehem, before the court could proceed to extraneous teſtimony! This cannot be done, a jury muſt give verdict upon all the evidence collectively; if the evidence is admitted, then the jury is bound to reſpect the weight of it: the competency of that evidence is for the court to decide, but the jury muſt eſtimate its weight.

The queſtion for you to decide at this time, gentlemen of the jury, is, whether upon the teſtimony of two witneſſes there is ground to believe the act was committed, and whether, from the priſoner's conduct at Bethlehem or elſewhere, it is proved to be with a treaſonable intention.

Judge Peters—I think the overt act and the intention conſtitute the treaſon; for without the intention the treaſon is not compleat. If a man goes for a private purpoſe, to gratify a private revenge, and not with a public or general view, it differs materially. The intention may poſſibly be gathered at the place where the act was committed, or it may not; if not, evidence is admiſſible to prove it elſewhere.

The jury then withdrew, and the court adjourned for about three hours, when they returned with the verdict GUILTY.

Judge Iredell then diſmiſſed the jury, with the thanks of the court for their patience and attention during the very fatiguing trial.*

Mr. Wynekoop, the foreman of this jury, made a ſhort reply thereto, and the court adjourned.

* *This trial occupied the unremitted attention of the court and jury from April* 30 *until May* 9, *inclusive, (9 days) during which time the jury never ſeparated.*

TRIAL

OF

JOHN FRIES,

FOR

TREASON:

Recommenced, on account of a Motion made by MR. LEWIS *for a new Trial; grounded on the disqualification of* JOHN ROADS, *one of the Jurymen on the former Trial.* *(See Appendix, No. II.)*

CIRCUIT COURT OF THE UNITED STATES.

PENNSYLVANIA DISTRICT.

JOHN FRIES was again arraigned on the indictment for treason*, before the Honorable SAMUEL CHASE and RICHARD PETERS, Esquires.

The prisoner pleaded, NOT GUILTY.

MR. LEWIS and MR. DALLAS, before engaged to plead for the prisoner, on account of the conduct directed by the court, to be observed by the counsel, withdrew their assistance; so that the prisoner was left without counsel; and on being asked by the court, if he would wish to have some assigned, he did not accept the offer.

THURSDAY, *April* 24.

Before the jurors were sworn in, they were individually asked (upon oath) these questions: "Are you any way related to the prisoner?"

* *See page* 17.

They all anſwered, " No." " Have you ever formed or delivered an " opinion as to the guilt or innocence of the priſoner, or that he ought " to be puniſhed?" The anſwer generally was, " Not to my know- " ledge." Some of the jurors ſaid, they had given their ſentiments generally, diſapprobatory of the tranſaction, but not as to the priſoner particularly. Theſe were admitted.

One of the jurors (Mr. Taggert) after he was ſworn, expreſſed himſelf to the court to be very uneaſy under his oath: he then meant that he never had made up his mind that the priſoner ſhould be hung, but very often had ſpoken his opinion, that he was very culpable; he did not, when he took the oath, conceive it ſo ſtrict, and therefore wiſhed, if poſſible, to be excuſed.—The court informed the juror, it was impoſſible to excuſe him, now he was ſworn.

The court informed the priſoner, that he had a right to challenge 35 without ſhowing cauſe, and as many more as he could ſhow cauſe for. Thirty-four were challenged, and the following admitted and ſworn on the jury:

Samuel Wheeler, Foreman; Henry Pepper; John Taggert; Cornelius Comegys; Ephraim Clark; Thomas Bailey; Lawrence Cauffman; John Edge; Charles Deſhler; Henry Dubois; Iſaac Dehaven; John Balliot.

Counſel for the Proſecution,

Mr. Rawle,
Mr. Ingersol.

Mr. RAWLE

Then opened the charge exhibited in the indictment—He obſerved, that the jury muſt be aware of the very unpleaſant duty he had to perform: he felt an extreme difficulty of ſituation—called forth by his duty to exhibit a charge againſt the priſoner at the bar of the higheſt magnitude, who now ſtood to anſwer, unattended by any legal advice; he felt impreſſed with the neceſſity of ſticking more than uſually cloſe to the line of his duty, which he ſhould endeavor to diſcharge as faithfully as poſſible. And he truſted that, while the jury felt their relation to their unfortunate fellow-citizen at the bar, they would, at the ſame time, make all ſuitable allowance for any errors which might appear on his (Mr. Rawle's) part, though it was ſincerely his deſire to avoid any, either in laying down the facts or the law, which he ſhould do under the direction of the court; and, he hoped, that the jury would carefully ſift and examine the law and teſtimony which his duty called upon him to advance, in order to ſubſtantiate the charge.

Mr. Rawle then proceeded to open the charge—he ſaid, he ſhould be able to prove, that John Fries, the priſoner at the bar, did oppoſe the execution of two laws of the United States, to effectuate which

he was provided with men, who, as well as himſelf, were armed, with guns, ſwords, and other warlike weapons, which, by their numbers and military appearance, were ſufficient to accompliſh their purpoſe, which was, not only to intimidate the officers of the government appointed to execute the above laws themſelves; but to releaſe from the cuſtody of the marſhal of Pennſylvania a number of perſons who were held in priſon by the ſaid marſhal, and to prevent him executing proceſs upon others. All this was done, as ſtated in the indictment by a combination and conſpiracy to oppoſe thoſe laws, by a large body of armed men, of whom the priſoner at the bar was the chief, and commander.

Mr. Rawle then proceeded, under the direction of the court, to ſtate the law.—The treaſon whereof the priſoner was charged was, "Levying war againſt the United States." U. S. Conſt. Art. 3. Sect. 3.

What he aſked, was levying war againſt the United States?

He conceived himſelf authorized, upon good authority to ſay, levying war did not only conſiſt in open, manifeſt, and avowed rebellion againſt the government, with a deſign of overthrowing the conſtitution: but it may conſiſt in aſſembling together in numbers and by actual force, or by terror oppoſing any particular law or laws. Again, there can be no diſtinction as to the kind or nature of the law, or the particular object for which the law was paſſed, ſince all are alike the acts of the legiſlature, who are ſent by the people at large to expreſs their will. Force need not be uſed to manifeſt this ſpirit of rebellion, nor is it neceſſary that the attempts ſhould have been ſucceſsful, to conſtitute the crime. The endeavor, by intimidation to do the act, whether it be accompliſhed or not, amounts to *treason*, provided the object of thoſe concerned in the tranſaction is of a general nature, and not applied to a ſpecial or private purpoſe.

In order to effect the object of thoſe embarked in crimes of this high nature, it is well known that various means are neceſſarily employed; various acts may be perpetrated to accompliſh the main end: they may proceed, by the execution of ſome enormous crimes, as burglary, arſon, robbery, or murder, either, or all of them; but even if one or all of theſe crimes were committed, except the purpoſe ſhould be of a general nature, they may form diſtinct and heinous offences; but the perpetrators may not be guilty of treaſon. If a particular friend of the party had been in the cuſtody of the marſhal; if even a number ſufficient for the purpoſe ſhould ſtep forward and reſcue ſuch a perſon, if it was not with a view to reſcue priſoners *generally*, it would amount to no more than a reſcue; but, if *general*, it is treaſon. It is the views of the party that fixes the crime, and therefore only the deſign is neceſſary to be known.

To prove that this doctrine was well eſtabliſhed in the United States, Mr. Rawle turned to 2 Dallas, 346 and 355, ſtating the opinions of the court in the caſes of Vigal and Mitchel, charged with, and convicted for treaſon. The attack on Gen. Nevill's houſe was of this general nature, becauſe he was an *officer* appointed to execute the obnoxious law; and being to the *officer* and not to the *man* that they objected, it was thought to be treaſon, and that deciſion was well grounded.

He observed, that the clause in our constitution was founded on a statute which was passed in England, to prevent the ever increasing and ever varying number of treasons, upon the general and undefined opposition to royal prerogative: the situation of things was such, previous to that period, as to call forth from the statesman, from the philosopher, and from the divine, even in those dark ages, the most vehement complaints: in attendance to these reasonable and just murmurs, the statute was passed.

Mr. Rawle was then producing an authority, when Judge Chase said, the court would admit, as a general rule, of quotations which referred to what constituted actual or constructive levying war against the king of Great Britain, in his regal capacity: or, in other words, of levying war against his government, but not against his person, because it was of the same nature as levying war against the United States would be applied here: so was that part called adhering to the king's enemies:—they may, any of them, be read to the jury, and the decisions thereupon,—not as authorities whereby we are bound, but as the opinions and decisions of men of great legal learning and ability. But even then, the court would attend carefully to the time of the decisions, and in no case must it be binding upon our juries.

Mr. Rawle quoted Hawkins, B. 1. chap. 17. sect. 23. as an authority of authenticity to prove, that not only those who rebelled against the king, by taking up arms with the avowed design of dethroning him; but those who withstood his lawful authority, and who endeavored to oppose his government; who withstood the king's forces, or attacked any of his fortresses—those, in fine, whose avowed object was of a public and general and not of a private and personal nature, were guilty of high treason. He also read Sir John Friend's case from Holt, 681. and Damarree and Pinchases' case, 8 State Trials, 289.

Judge Chace begged the attorney to read only those parts of the cases which referred to what could be treason in the United States, and nothing which related to compassing the king's death.—It would be found, he observed, by an attention to the last case, that because the intention was a rising to demolish ALL meeting-houses, generally, it was considered to be an insurrection against the toleration act, by numbers and open force, setting the law at defiance. This would be found to be the opinion in Foster 213.

Mr. Rawle said, thus he conceived it—even if the matter made a grievance of was illegal, the demolition of it in this way was, nevertheless, high treason, because of the people so assembled taking the law into their own hands; thus in Foster it would be seen that demolishing *all* baudy-houses, as such was high treason, as much as demolishing *all* meeting-houses, being equally an usurped authority. He also read Douglas 570, Lord George Gordon's case, when it was Lord Mansfield's opinion that any attempt, by violence, to *force* the repeal of a law, or to prevent its execution, is levying war, and treason.

He considered, from those few authorities, that he was justifiable in saying that a rising, with intent by force to prevent the execution,

of a law as well as laws in general, preventing the marſhal executing his warrants, and preventing the other officers charged with the execution of the laws in queſtion, amounted to levying war, agreeable to the conſtitution of the United States.

Mr. RAWLE then proceeded to ſtate the moſt prominent facts which could be produced in the courſe of the evidence, in which it would fully appear, he preſumed, that John Fries, the priſoner, was the moſt active in his oppoſition to thoſe laws and to every attempt to carry them into effect; that he in every inſtance ſhowed his averſion of, and oppoſition to the aſſeſſors, and determination by threats and menaces to prevent them doing their duty, and that whenever any force was uſed, or terrific appearances held up, he was the commander and gave the orders to his men who, at times in great numbers joined him: and that finally by threats and intimidation, equally the ſame in the eyes of the law as force, he, the priſoner, did attain his object, to wit, the releaſe of a number of priſoners who were confined for oppoſing the execution of the law, and were actually in cuſtody of the marſhal in a houſe at Bethlehem, which by reaſon of his having priſoners there, and his having an armed *posse* to protect his lawful authority, was to all intents a fortreſs of the United States—and further that he did, compleatly for a time, prevent the execution of the laws intended, in thoſe parts, and thus did bid defiance to all lawful authority.

COURT, to the priſoner.

John Fries, you will attend to all the evidence that will be brought againſt you; will attend to their examination, and aſk any queſtions you pleaſe of the ſeveral witneſſes, or of the court, but be careful to aſk no queſtions wherein you may poſſibly criminate yourſelf, for remember, whatever you ſay to your own crimination, is evidence with the jury, but if you ſay any thing to your juſtification, it is not evidence, the court will be watchful of you, they will check any thing that may injure yourſelf: they will be your counſel, and give you every aſſiſtance and indulgence in their power.

WILLIAM HENRY, Esq. called.

See his former teſtimony page 24, and page 82.

Mr. Henry related the firſt information he received of this oppoſition to the laws in queſtion, and their unwillingneſs to ſuffer the aſſeſſments. That on application by Mr. Eyerly (the commiſſioner) he iſſued a number of ſubpœneas to bring before him ſundry perſons to examine theſe facts, which he found ineffectual from the intimidations of a number of people who were met where the examinations were to be held. The witneſs, underſtanding that the marſhal was to meet a number of perſons upon whom he had executed proceſs, thought it proper to go to Bethlehem, on that day, in order to prevent any extremities that might be attempted. He related the arrival of Keefer and Paulus and others, and afterwards of about 70 or 80 foot, generally armed with guns, having ſhot pouches and powder horns, and alſo of about 50 light horſemen with ſwords and piſtols, that of theſe men

Fries appeared to be the leader; that he was the perſon engaged in negotiation with the marſhal for the priſoners, whom the witneſs underſtood he ſaid he would have. That there were frequent cries out of, "we will have the priſoners," and frequent threats thrown out, particularly againſt Mr. Eyerly, Mr. Balliot, and himſelf (the witneſs,) ſometimes pointing their guns to the windows.

COURT. Was the priſoner preſent at theſe threats?

WITNESS. I cannot recollect, as I was about in different parts of the houſe—one perſon I ſaw cock his piece ſeveral times to thoſe ſtanding on the ſtairs. One of the riflemen came into the back room and ſwore, that if theſe damned *stamplers* had given them an opportunity, they would have ſhown them how they could have fought, and they would ſhow them yet.

How long has the word *stampler* been in uſe in thoſe parts?

Only ſince about the fall of '98.—The witneſs farther depoſed, that Fries was diſtinguiſhed from the reſt by a black feather in his hat—that the perſons who were in cuſtody of the marſhal reſided from 30 to 40 miles from moſt of thoſe who came to reſcue them, and near 40 miles from where Fries lived.

WILLIAM BARNETT (ſee page 28.)

Being one of the poſſe, was appointed by the marſhal to meet and endeavor to prevail on the armed party not to come into Bethlehem; he depoſed that he mentioned to them the weſtern inſurrection, and told them of the conſequences of reſiſtance, but to no effect: Fries, the priſoner, ſaid, he had had a fight yeſterday, and would have another to-day; the witneſs expected he had been in a frolic. That the captain of the riflemen ſeemed determined to releaſe the priſoners, and indeed that was their common cry. The witneſs aſked them if they would not allow that if the priſoners had done wrong, they ſhould ſuffer for it: they anſwered they had no objections to that, but they ſhould not be dragged to Philadelphia, they ſhould be tried at Eaſton, their own county town. They appeared to be in liquor a little.

The witneſs was aſked if he had any recollection about who would get the firſt blow, or who were expected to fire on them (Fries and his followers.) The witneſs had not a perfect recollection of it.

ATTORNEY. Do you not recollect any perſon ſaying "you muſt ſlay, ſtrike, and make as good as you can, if I fall or get the firſt blow," or ſomething like that, in the German language?

WITNESS. I do not recollect any ſuch words.

JOHN BARNET (ſee page 31.)

Depoſed that he was one of the poſſe at Bethlehem; that he ſaw the armed men come into the town, the horſe with their ſwords drawn, as uſual, when they went to war. When the witneſs ſtood guard on the ſtairs, Fries and another wanted to go up; Fries had his ſword, and the other a piſtol: upon their aſking for the marſhal,

he was called, and Fries was let up to him, but the other was not ſuffered to go up: one at a time the witneſs thought was enough. The witneſs heard ſome of the priſoners at Bethlehem ſay, that they did not know the men who reſcued them, nor did they know of their coming, or wiſh to be reſcued.

CHRISTIAN WINTERS (ſee page 34.)

Was one of the marſhal's poſſe—he related ſome converſation between the marſhal and the priſoner on the ſtairs: after he was relieved from that ſtation, he went down, when he aſked the people out of doors what they were doing: they ſaid they would obey their captain's orders; the witneſs did not know what captain they meant; they were all ſtrangers to him.

ATTORNEY. Did any man ſtrike at you?

WITNESS. No, but after the affray was over, there was one of them walked under the ſtairs with his ſword, of whom the marſhal ſent me to inquire his name: he anſwered he did not mean to do any harm. Another ſaid he did not mind theſe damned ſtamplers.

PHILIP SCHLAUH (ſee page 41.)

Depoſed that he was at Bethlehem on the 7th, of March where he ſaw the priſoner at the bar, who ſaid to his company that he had been up with the marſhal, and that the priſoners were refuſed by the marſhall, who ſaid if they were taken it muſt be by force—"Now boys," ſaid he, "I give you my orders; we don't mean to hurt any body; we have to paſs between 4 or 5 centries, I expect I ſhall get the firſt blow, and when I get the firſt blow you muſt do as well as you can; will you agree to it boys?" "Yes" they ſaid.

Judge Peters—Do you recollect the very words Fries mentioned?

WITNESS. The very words were, ſtriking his breaſt "I ſhall be the foremaſt man, I expect I ſhall get the firſt blow, then do as well as you can."

ATTORNEY. Did he ſay any thing about firing?

WITNESS. No.

COURT. Do you remember any words he uſed?

WITNESS. No.

Chriſtian Winters returned—Having forgot to mentioned that when the demand was made of the marſhal, he told the priſoner he could not deliver up the priſoners: Fries ſaid "you are not to be blamed; you do your duty, and I give you my word you ſhall not be hurt by my men, as for the reſt I cannot anſwer."

SAMUEL TOON (ſee page 52.)

Related ſomething of the company proceeding to the bridge, the converſation and occurrences there, and the miſſion to Bethlehem, in which he, and two others were ſent for the releaſe of Kieſer and Paulus—That when Stahler's company were drawn up before the

houſe, one of them, named Henry Hoover, ſaid if he only had eight men, he would go up and reſcue the priſoners, when the witneſs heard Fries anſwer that he ſhould not behave himſelf ſo, for that was not the way to go on. After a little time Fries ſaid to his company "come on boys, dont be afraid." This was after he had been up with the marſhal. They then wanted to preſs up ſtairs, and then the priſoners were delivered up. The witneſs heard no other expreſſions from Fries.

ANDREW SHIFFERT (ſee page 56)

On the company meeting at Ritter's tavern the witneſs aſked them what they were going to Bethlehem for? They ſaid "to releaſe the priſoners." Then ſaid the witneſs, you muſt either fight or hide yourſelves in the Buck wheat ſtraw. Ritter anſwered there was no danger of that, for when they come to ſee ſo many in arms they would ſoon draw back, and would let the priſoners free.

ATTORNEY. Was there any thing ſaid about whether to go with arms or without arms?

WITNESS. There was nothing ſaid againſt it, that I know of. I told them I would rather go home.

WILLIAM NICHOLS (marſhal) (ſee page 37.)

Related the receipt of the warrants, which he produced, and the firſt part of his progreſs; alſo the circumſtance that occurred with Shankweiler, and of the commencement and progreſs of the affair at Bethlehem. Reaſoning with the priſoner at the bar, and his ſtill perſiſting in his demand of the priſoners, the witneſs ſaid that it was a cowardly thing to oppoſe an individual thus placed, but that if he had 20 armed men, the priſoners ſhould not be reſcued. The priſoner laughed at that: on telling him that an armed force would be ſent up, he anſwered that they were able to come againſt any force.

COURT. Did he ſhow any particular regard for theſe priſoners, or what was his aſſigned reaſon for demanding them?

WITNESS. No he did not, he ſaid the law was a bad one, and ought not to be executed.

Queſtion by the priſoner.*—When the converſation paſſed between you and I, did I not aſk you if theſe priſoners could not be admitted to bail?—I ſaid I would come forward and riſk my life, that you ſhould not be hurt—Was it ſo or was it not?

WITNESS. Very poſſibly, but I do not recollect it.

Had I any arms when I came up to you.

Not at that time.

The court then adjourned to dinner, firſt having placed the jury under two ſworn bailiffs, and qualified each juror not to ſpeak to any one nor ſuffer any one to ſpeak to them, touching the matter relative to the trial of this iſſue.

* *The court here again begged the priſoner to ſay nothing, nor aſk any queſtion that would tend to his crimination.*

JOHN DILLINGER (see page 57.)

Depoſed his having left a meſſage at Young Marks's houſe for him to meet the next day to go to Bethlehem, and that Stahler who ſent him, ſaid it was very hard to let theſe men (the priſoners) ſuffer by going down to Philadelphia. Being at Bethlehem the next day, the witneſs ſaw the priſoner at the bar there: hearing an uproar, the witneſs went into the houſe, where he heard the priſoner (Fries) ſay, "draw near boys, don't be afraid."—I puſhed the people back, as did ſeveral others there.

JUDGE PETERS. Was it a common muſter day?

WITNESS.—No, I believe not.

CHRISTIAN HECKAVELTER qualified.

The witneſs reſided in upper Milford townſhip—Soon after I received my warrant as aſſeſſor of the townſhip and was proceeding on the buſineſs, I was told by my neighbors that the people of the townſhip would not allow me to do it. After I had been to a few houſes, I was told if I went on, it ſhould be at my peril—this was the latter end of November I believe. I then returned home, and informed Mr. Balliot and Mr. Elliot, in order to conſult them, what ſhould be done. They agreed to call a townſhip meeting to collect the minds of the people. After it was held, I received from a deputation of three men appointed for that purpoſe, information that I muſt deſiſt, for there was no ſuch law in exiſtence. After that Mr. Eyerly informed me he had called a meeting of the people at ſquire Schymer's, he took me with him. A number of people aſſembled there, ſome armed and ſome without arms. Mr. Eyerly told them he was come to explain the law to them. There was a queſtion among them whether it was a law or not; ſome ſaid it was not in exiſtence, and that it was a law of his own making, for that he was able enough to make ſuch a law himſelf: I believe it was agreed among them that they would not have their houſes meaſured.

COURT. Was there not frequent threats thrown out?

WITNESS. Yes there was: they alſo gave it as their poſitive declaration that they would not ſubmit to the law; this was their common opinion.

ATTORNEY. Do you know any thing of papers being paſted up with ſwords, piſtols, or threats, being painted or drawn on them?

WITNESS. No.

JOHN ROMICK,

Depoſed that he was an aſſeſſor, in Macungy townſhip—Not long after I received my commiſſion, a women came to me, and ſaid I ſhould not go on with that buſineſs, before I was prepared with an iron cap: another old women ſoon after told me I ſhould not venture to that buſineſs of meaſuring houſes: I would come in bad condition with it. I told her I did not think it, becauſe they were all Chriſtians there

about, and I believed chriſtians would not hurt me. The talk was, that in ſome houſes they kept hot water againſt the aſſeſſor came round to do his duty. After that I heard there, that there had been ſeveral meetings like complots, or conſpiracies to obſtruct the aſſeſſors, on that account I was frightened to make a beginning. I heard that Mr. Heckavelter was ſtopped. Hearing that there was to be a meeting at ſquire Schymer's I went there, where Mr. Eyerly explained the law.

ATTORNEY. After that, did the people let you go on?

WITNESS. No.

Q. Was there any ſedition papers put up near you?

A. Yes, about three miles off—near Millar's town, but I cannot tell what they were; I never read them.

JACOB OSWALD

Depoſed, That he was appointed aſſeſſor for Lynn townſhip: That about December, 1798, he came to about the ninth plantation, when he was ſtopped by the people.—I heard that there was to be a townſhip meeting held, ſo I went, and took two conſtitutions with me, and the proclamation of General Waſhington to the Weſtern inſurgents in 1794. I alſo ſhowed them my orders, and the act of Congreſs. They thought Congreſs had no right to tax them: I ſhowed them that Congreſs had a right. They ſaid, I ſhould ſtop till the lower townſhips began to meaſure, as Philadelphia and Germantown; ſo I was forced to ſtop. The townſhip was not aſſeſſed till after the light horſe went up there, and then the liberty poles were cut down.

ISAAC SCHYMER, ESQ.

Was an aſſeſſor for the townſhip of Williams and Lower Sauchon; he depoſed, That he was proceeding on his buſineſs; and, on account of the talk of oppoſition, wrote to a neighboring aſſeſſor to go about with him, but that he refuſed on that very account: he then went by himſelf; at one place he was ſtopped, when the man ſaid to the witneſs, he would abuſe him if he pretended to meaſure his houſe. The witneſs ſaid, he did not mean to quarrel with him; he muſt make his returns to him in ten days. The man alſo ſaid, there would be danger in his going to take the rates.

In Lower Sauchon the witneſs alſo met with oppoſition: the men had gone from their homes; but a quantity of women were gathered there, and compelled him to deſiſt.

JAMES WILLIAMSON, ESQ.

Depoſed, That he was an aſſeſſor in Northampton county: That ſoon after he had received the appointment, ſeveral of his near neighbors came and warned him not to go about the townſhip: That he attempted many houſes, but they would give him no information; whereupon he told them to bring their rates in ten days, according to

law: they anſwered, they would not bring them, they would make no returns: every one ſaid, he ſhould offend his neighbors if he did. I then thought it beſt to put up advertiſements for them to meet together, on a certain day, to conſult what it was beſt to do: a very large party of them met. After a little time, three or four ſeem to wiſh to diſturb the meeting. One of them aſked for my authority: I ſhowed them my appointment: they ſeemed to be much oppoſed to what was done: I reaſoned with them, but to no purpoſe; many of them ſaid, it was no law. I read the law to them: they were pretty well ſatisfied while I was reading, till I came to where the valuation was mentioned, then one of them cried out, it was a damned law, and they never would ſubmit to any ſuch law. I told them it was a law, and as long as it was a law, we muſt ſupport it; they ſaid they never would, and ſignified they would rather fight againſt it. I told them that fighting was attended with dangerous conſequences, for that men loſt their lives in it; but they ſaid they would rather die than ſubmit to it, or live under it; they had fought againſt ſuch laws, and they would again. They told me, that I ſhould not go about to collect the returns, they never would ſuffer it to be done; I ſhould let the buſineſs alone, and if any damage occurred to me by being fined, the townſhip ſhould reimburſe me. The whole body ſeemed to riſe and give their aſſent to this.

JAMES CHAPMAN, ESQ.

Related nothing in his teſtimony different from his depoſition in the former trial, page 67.

JOHN RODRICK (ſee page 72.)

Did not vary from his former teſtimony, but ſhortened it, in the leſs important parts.

WILLIAM THOMAS (page 58.)

Depoſed, That Fries and Kuder ſent Marks and Gettman to *hunt* (he before ſaid *find*) the aſſeſſors: That upon their entering Quaker town, on the 6th of March, the people fired all their pieces. He related their conduct to Mr. Foulke and Mr. Childs there, and the meeting next morning to go to Millar's town, and thence the circumſtance till the arrival at their bridge: that they had a drum and fife which was played, and that they were commanded by John Fries and Kuder.—He depoſed, That Fries ſaid to his men, "For God's "ſake don't fire *except* we are fired on firſt; after I am killed, then "help yourſelves as well as you can."—That about 30 followed Fries into the houſe, of which he was one; ſome had arms, and ſome had not. Fries had his ſword.

COURT. What did you go in the houſe for?

WITNESS. Why, Henry called me, and ſaid I muſt come along.

Q. Did you know any of the priſoners?

A. No; none of them.

COURT. What did you go up to Bethlehem for?

WITNESS. Why, old Marks ſaid, it was to ſhow ourſelves; but I cannot tell what for.

Q. Was it to take the priſoners?

A. I do not know myſelf. The people of Northampton were going up to take the priſoners, and we went to ſhow ourſelves.

Q. Were you armed?

A. Yes.

Q. How did the people go away after they got the priſoners?

A. Why, they got away as faſt as they could: thoſe that were on horſeback rode away as faſt as they could, and thoſe on foot ran away.

PRISONER TO THE WITNESS.

When I came out to you and told you that the marſhal had ſhowed me his order, had I any arms, or a ſword?

A. No. The laſt time, when you told the men they muſt reſcue the priſoners by force, you had a ſword.

COURT. Did you hear the people cry out, they would have the priſoners?

A. Yes; one Hoover, particularly.

PRISONER. Did you ever ſee me at any of the townſhip meetings, except at Kline's?

A. I never ſaw the priſoner at any meeting at all, as I was not at the meeting at Kline's: I was only at the meeting at Mitchel's.

WITNESS. After we had come from Bethlehem three or four days, I told the priſoner that I heard the light horſe was coming up: the priſoner ſaid no, it was all ſettled and quiet: if they ſent a child of ten years old, he (the priſoner) would help the marſhal to take them.

EVERHARD FOULKE, ESQ. (page 115.)

Depoſed, That he was an aſſeſſor in Lower Milford: That he proceeded on in the aſſeſſment until he met the other aſſeſſors, and the principal aſſeſſor, James Chapman, at Jacob Fries's tavern, where they dined together; and after dinner the priſoner came into the room, and ſaid, he was ſorry to ſee them there upon that buſineſs: he warned them not to proceed any farther; if they did they ſhould be hurt; and then he immediately left the room, without even an anſwer. He then mentioned the circumſtance near Singmaſter's, as related by Mr. Rodrick (p. 71.) the priſoner ſeized the deponent's horſe, but let him go again, ſaying, he would take him the next day: That they had 5 or 700 men in arms, and would come to his houſe and take him. He heard the firing at Quaker's town; the circumſtances which occurred there he related. Having taken the aſſeſſment papers, the priſoner returned them, ſaying it was more than the witneſs deſerved.

Q. Did they ſay any thing about getting the law repealed?

A. I am not certain.—The other people ſaid they would ſubmit; but not till after the other ſtates did: Fries ſaid, they would never ſubmit.

COURT. You are a magiſtrate, are you not, ſir?

A. Yes.

Q. Did Fries know it?

A. Yes; he had many times known me in that capacity.

PRISONER.—When I took you from the people to the back kitchen, and away out of the houſe backward, and helped you on your horſe, Did I or not deſire you to go out of the way, ſo that the people ſhould not ſee you?

WITNESS. Yes, you did take me out the back way, and ſaid, Captain Kuder was then commanding the people in the front of the houſe: you did deſire me to keep out of their way.

CEPHAS CHILDS (ſee page 73.)

Related ſome of the prominant tranſactions at Quaker town, where he was much abuſed, though not by the priſoner; but his papers, as coroner, were taken away by the priſoner, and returned to him; when, having been warned not to proceed, the witneſs told the priſoner he would not return to it in that capacity, unleſs forced to it by law, as he had left it. One perſon who abuſed the witneſs ſaid, he had fought for liberty, and would fight for it again; but he afterwards returned, ſeemed ſorry for it, and ſeveral times afterwards acknowledged his crime, and hoped forgiveneſs. The general language of the people was abuſe to the "damned laws," as they called them.

ISRAEL ROBERTS (page 113.)

In ſeveral converſations with the priſoner, he heard him expreſs his diſlike of the law. Having procured the law, and heard the priſoner ſay that he had never read it, he deſired him to examine it, which the priſoner ſaid he would do, and aſked leave to take it home.—The witneſs afterwards aſked his (Fries's) ſon, what his father thought of the law? he anſwered, not much, he believed. At a meeting held (perhaps at Mitchel's, p. 65 and 68.) an attempt was made to read the law, but they would not ſuffer it: one man ſaid, he knew the law; another ſaid, they wanted to hear none of our damned laws, nor would hear it, and, ſtamping his muſket on the floor, ſaid, "This is our law; "we have made a law of our own, and we are determined to ſupport it." —On the 5th of March I met John Fries, when he appeared to be very ill humoured: I aſked him what was the matter? he ſaid, the aſſeſſors had been about, and they ſhould not do it. He aſked me, if they had taken the dimenſions of my houſe? I ſaid they had. He aſked me, if I had told any body of it? I ſaid not. He ſeemed very much oppoſed to the law, and ſaid, his townſhip ſhould not be aſſeſſed till other parts were gone through.

Q. Did you ever hear him ſay any thing about war?

A. I have heard him say many times if there was a war he would be in it: if the French, or whoever invaded the country, he would oppose them. I mentioned to him that government would send up an army. He said if they did, they would turn about and join them, he was of opinion.

ATTORNEY. Did you ever recollect hearing him say, that if a beginning was made it would go on well?

A. I do not.

FRIDAY, *April* 25.

DANIEL WIEDNER.

Q. Did you, on the 6th of March, see a party of men marching down the road from Jacob Fries's?

A. Yes; I saw a body of men march to Fries's, and then to Quaker town; some were armed, and some unarmed. I went after them as far as Fries's.

Q. Had they a drum and fife?

A. Yes; they had when they came by my house, and by Jacob Fries's too.

Q. Did you see the prisoners with them?

A. Yes.

Q. Who appeared to have the command?

A. The prisoner and capt. Kuder.—They wanted somebody to go after the assessors: so Gettman, Marks, and two more went.

Q. Who wanted them to go?

A. The prisoner at the bar.

Q. What were they to do with them when they got them?

A. Why they were to bring them to Quaker town.

Q. Were any of these four men who went after the assessors armed?

A. Yes.

Q. How many of them were armed?

A. I think Marks and Gettman were, or all of them; I am not sure. I think one of the four was the prisoner's son: I do not know whether he was armed.

Q. Did you not meet at Marks's the next morning to go to Bethlehem?

A. Yes. When we left Marks's, we went on towards Ritter's tavern, and before we got there, Marks's son was coming back, and held up his sword for us to stop: he said that he thought it was all over before now; they were gone from Ritter's tavern. Some agreed to go back, some said since they were gone so far they would go through.

Q. Of which was the prisoner at the bar?

A. I think he was for going on.

COURT. Was William Thomas among you?

A. Yes.

Q. Was he for going on, or not?

A. I cannot recollect.—We then went on to Bethlehem.

Q. Did the prisoner go into the house at Bethlehem, and what happened there?

A. Why, he went into the house, and when he came out, he said, the marshal would not give up the prisoners without we should take them by force, and if they had a mind to take them, he would go foremost. Fries and the rest then went in, but I don't recollect whether he had a sword at that time: he had one when we were going to Bethlehem.

GEORGE MITCHEL (page 64.)

Related the ground of going to Bethlehem, and their arrival there.

COURT. Did you see any of the people before the house point their guns?

A. No, not to my knowledge.

Q. Did you hear any threats used to Judge Henry or any other?

A. Not that I know.

PRISONER. At Marks's, the time I said I meant to oppose the law, the room was pretty full of people; in what part of the room was it?

A. It was on the right hand side of the room, on the bench.

Q. Was there any people by?

A. Not that I recollect.

COURT. Be cautious what you say, John Fries.

PRISONER. Do you not remember that I said (after the committee was agreed to) I would come forward to the government, if they would send the order by a child of ten years old, if I was sent for?

A. Not that I recollect.

The counsel for the prisoner here rested their evidence.

The prisoner was asked if he had any witnesses to produce: he answered, None.

MR. RAWLE

Said he felt himself so very peculiarly situated in this case, that he would wish the opinion of the Court. The unfortunate prisoner at the bar appeared to answer to a charge, the greatest that could be brought against him, without the assistance of counsel, or any friend to advise with.—To me, said Mr. R. the evidence against the prisoner is extremely strong. It will be recollected, that in opening the evidence, I informed the jury what points I should prove: I opened my ideas of constructive law, and produced a *few* authorities in support of my opinions. I believe it will be found, that in no *material* point have I failed to substantiate what I first gave notice that I could prove. I therefore conceive the charges are fully confirmed.

But although, if this trial was conducted in the usual way, and counsel were ready to advocate the cause of the prisoner, it would now be proper on my part to sum up the evidence as produced to the jury, and apply it to the law, in order to see whether the crime was fixed or not—under the present circumstances, I feel very great reluctance to fulfill, what would in other circumstances be my bounden duty, lest it should appear to be going farther than the *rigid* requisition of my office compels me to. I therefore shall rest the evidence and the law here, except the court think that my office as public prosecutor demands of me to do it, or that I should not fulfil my duty without doing it.

Judge Chase.—It is not unfrequent for a prisoner to appear in a court of justice without counsel, but it is uncommon for a prisoner not to accept of legal assistance. It is the peculiar lenity of our laws that makes it the duty of a court to assign counsel to the person accused. With respect to your situation, sir, it is a matter entirely discretionary with you whether you will state the evidence and apply it to the law or not. There is great justice due to a prisoner arraigned on a charge so important as the present: there is great justice also due to the government. On the one hand an innocent person shall not be made to suffer for want of legal assistance; on the other a guilty person shall not escape through an undue indulgence, or the failure of the accuser in a duty his office may require of him. If you do not please to proceed, I shall consider it my duty to apply the law to the facts, the prisoner may therefore offer what he pleases to the jury.

Prisoner. I submit to the court to do me that justice which is right.

Judge Chase. That I will, by the blessing of God, do you every justice.

Judge Peters. Mr. Attorney, while you are justifiable in considering the situation of the prisoner, that he might not suffer by any partial impressions you may make on the jury, there is another consideration deserving attention—there is justice due to the United States. Though I see no difficulty in resting it here, yet, possibly persons who may have come into court since the trial commenced may expect something of a narrative of the transactions, and such a narrative may be of great help to the jury. I wish it to be done for the due execution of public justice, and, God knows, I do it not with a desire to injure the prisoner, for I wish not the conviction of any man. It is a painful task, but we must do our duty. Still I think you are at liberty to fulfil your own pleasure.

Mr. Rawle would, then, under a solemn impression that it was his duty, take up some part of the time of the court and jury in relation to the prisoner at the bar, a task rendered far more painful on his part, from the circumstance of the prisoner's appearing there (unexpectedly) without counsel to plead his cause. In as few words as possible he would endeavor to collect the most prominent features of the testimony which had been produced, and to apply it to the law.

As he ſtated before, Mr. Rawle ſaid, levying war in the United States againſt the United States, was a crime defined by the conſtitution; in relation to the republican form of government exiſting among us it could only conſiſt in an oppoſition to the will of the ſociety, of which we all are members, declared and eſtabliſhed by a majority; in ſhort, an oppoſition to the acts of Congreſs, in whole or in part, ſo as to prevent their execution, either by collecting numbers, by a diſplay of force, or by exhibiting that degree of intimidation which ſhould operate, in either way, upon thoſe charged with the execution of the law, either throughout the United States or in any part thereof, to procure a repeal, or a ſuſpenſion of the law by rendering it impracticable to carry ſuch law or laws into effect in the place ſo oppoſing, or in any other part. This offence he conſidered to be ſtrictly *treason* againſt the United States.

The queſtion then is, how far the caſe of the priſoner and his conduct merits this definition? In order to be informed of that it was neceſſary to call to recollection the evidence, ſo collected, as to diſplay the train and progreſs which marked its footſteps from its firſt dawning, till its arrival at the fatal deed denominated treaſon.

It will firſt be obſerved by the teſtimony of ſeveral reſpectable witneſſes (Meſſrs. Heckavelter, Ramich, Schymer, Ormond, and Williamſon) that attempts were made and executed, by a combination, in which, unfortunately for him, the priſoner at the bar was very active, to prevent the aſſeſſors from doing the duty required of them when they accepted their office, and that this combination exiſted both in Northampton and Bucks counties, and to ſuch a degree that it was impoſſible to carry the law into effect. In lower Milford more particularly we have the evidence of four reſpectable gentlemen (Mr. Chapman, a principal aſſeſſor, and Mr. Rodrick, Mr. Foulke, and Mr. Childs, three aſſeſſors) who were employed in the execution of thoſe laws. Theſe gentlemen ſay that they met with ſuch oppoſition at an early period of the inſurrection, as deterred Samuel Clark from undertaking the buſineſs at all, although he had taken upon him the office. From this difficulty, Meſſrs. Foulke, Rodrick and Childs determined that they would proceed to aſſeſs lower Milford townſhip together, which they attempted, and did not deſiſt until compelled by the extreme oppoſition which their reſpective teſtimony relates to have happened on the 5th and 6th of March, in their progreſs to, and at Quaker's town, which ill uſage is all corroborated by other witneſſes. This ſpirit of oppoſition to the laws, as exhibited generally, is alſo related by Mr. Henry and Col. Nichols, the marſhal, wherein it appears that proceſs could not be ſerved, and that witneſſes could not be ſubpœnead, being deterred from the threats made to them by this extenſive combination; and that in the ſerving of proceſs perſonal abuſe was given, as well as to the aſſeſſors who attempted to execute the law. In ſhort the law was *proſtrate* at the feet of a powerful combination.

Mr. RAWLE here called to view the occurrences in Bucks county, as depoſed by Meſſrs. Foulke, Rodrick, Chapman, Thomas, Mitchel, and Wiedner, exhibiting a diſpoſition to inſurrection by a great number of perſons, and who engaged in its acts; he referred to the meeting

at Jacob Fries's, where John Fries, the prisoner at the bar, expressed himself as determining to oppose and continue hostile to the laws. The circumstance afterwards near Singmaster's, where Mr. Rodrick made his escape, and where, as well as at other times, the prisoner forbade those officers to proceed, under threats of personal danger. It appeared Mr. Rodrick had given offence, not by his conduct, but because he came from a distance of ten or twelve miles into that township to prosecute his duty. However the assessors met the next day, but were stopt at Quaker town, where they were extremely abused.—To be sure, while the prisoner at the bar was in the room, and whenever he was present, their abuse was suspended, when he absented himself, it was renewed. The papers were taken from Mr. Childs, and also from Mr. Foulke, but returned, because they were not the identical papers. Here it must be observed in justice to the prisoner that one more of his few good actions appeared, which Mr. Rawle wished in his heart had been more numerous.—Fries assisted Mr. Foulke to get out of the house the back way, and advised him to keep out of the way of the men.

On the evening of that day they went up to Miller's town: here Mr. Rawle called to mind the message delivered by John Dillinger for convening the meeting the next day; this message was the fruits of a consultation held at the house of Jacob Fries, after they left Quaker town, when they determined to proceed to Millar's town the next morning. The next morning they met and went on as far as Ritters, where it appeared they were stopped for a short period by young Marks, who had been sent forward, with information that the prisoners were gone on to Bethlehem: a doubt being started whether they would not be too late, it was debated, and at last determined to go forward: of this latter opinion was the prisoner at the bar. It was in evidence that none of those people knew the prisoners whom they were going to release: this Mitchell and others swore.

Here Mr. Rawle thought commenced the overt act in the indictment; hitherto only the general opposition to the law, and the intention with which the after conduct was perpetrated, appeared.—They proceeded to Bethlehem, and here the officer of militia, the man who derived his power from the people, the prisoner, *Captain John Fries*, whose duty it was to support the law and constitution of the United States, made a most distinguished figure. At Bethlehem it appeared that the prisoner was to step forward to effect the surrender of the prisoners, and of course to lay prostrate the legal arm of the United States. These prisoners were in the lawful custody of the marshal, he had lawful process against them from the district judge; they were in the house appointed for their safe keeping until they should be removed; he kept guard over them, and in order to execute his office he had provided, by virtue of the powers given to the sheriff in the several counties agreeable to law, an armed force called a *posse committatus*, or the power of the county. This force (about 16 or 17) he supposed sufficiently great to prevent the prisoners in his charge being liberated, it appeared, however in the sequel that they were not sufficient for that purpose.—The prisoner with an armed force arrived at Beth-

lehem, and proceeded on his miſſion to the marſhal: he had a ſword when he marched his men into the town; but it appeared that he left it when he entered on his other buſineſs, to wit, demanding the ſurrender of the priſoners; the marſhal anſwered, that he could not deliver them up. John Fries then returned to his men; and from the teſtimony of Mitchel, Barnet, and Schlaugh, (this was an important part of his conduct) he ſaid, "They muſt be taken by force; the "marſhal ſays he cannot deliver them up; if you are willing, we will "take them by force: I will go foremoſt; if I drop, then take your "own command." Words were followed by actions; they went into the houſe, and the priſoners were given up.

This, Mr. Rawle thought, was an unqueſtionable, full and complete proof of the commiſſion of the *overt act*, and that overt act is *high treason*, as laid in the third and fourth counts of the indictment, to wit, that they did, *by force prevent the marshal from executing lawful process, to him directed; and, secondly, that they did deliver, and take from him certain persons, whom he had in lawful custody;* and, further, this was done by *force and arms*, of men arrayed in a warlike manner, and by a number exceeding one hundred perſons. This the indictment juſtly calls levying war, and treaſon.

To him Mr. Rawle ſaid, there was no doubt but the act of levying war was completed in the county of Bucks, independently of all thoſe actions at Bethlehem; for there the priſoner and others were armed, and arrayed with all the appearances of war: with drums and fifes, and at times firing their pieces; and this to oppoſe the laws and prevent their execution, and there, by this force, they executed one, and the main part of their plan; they there did ſet the law at defiance: that was part of their grand object, and was done with a general, and not with a particular view, an eſſential ingredient in treaſon. Whether theſe actions were to be conſidered as a ſeparate act of treaſon, or whether they were to evince the intentions of the party, it certainly muſt be conſidered as teſtimony, and ſuch as muſt have an important weight towards the verdict.

Gentlemen, ſaid Mr. Attorney, you will conſider how far the individual witneſſes are deſerving your credit; if you conſider them worthy of being believed, and if the facts related apply to the law which I ſubmitted to your conſideration, and which, from the ſilence of the court, I think you muſt conſider as accurate, if not I ſhall ſtand corrected by the court,—there can be but little doubt upon your minds, that the priſoner is guilty: if it be not ſo, in your opinion, you muſt find him otherwiſe.

I have endeavoured to do my duty with integrity. I have advanced nothing but what appears to me to be clearly ſubſtantiated; but with you, gentlemen, and with the court, I leave the truth of the opinion.

Court. John Fries, you are at liberty to ſay any thing you pleaſe to the jury.

Priſoner. It was mentioned, that I collected a parcel of people to follow up the aſſeſſors, but I did not collect them; they came and fetched me out from my houſe to go with them.

I have nothing to ſay, but leave it to the court.

JUDGE CHASE

Then addressed the JURY *as follows:*

GENTLEMEN OF THE JURY,

JOHN FRIES, the priſoner at the bar, ſtands indicted for the crime of *treaſon*, of levying war againſt the United States, contrary to the conſtitution.

By the Conſtitution of the United States, art. 3. ſect. 3. it is declared, "That treaſon, againſt the United States, ſhall conſiſt *only* in "*levying war* againſt them; or in adhering to their *enemies*, giving "them *aid* and *comfort*."

By the ſame ſection it is further declared, "That no perſon ſhall "be *convicted* of treaſon, unleſs on the teſtimony of *two* witneſſes to "the *ſame overt act;* or on confeſſion in open court;" and that "the "Congreſs ſhall have power to *declare* the *punishment* of treaſon."

Too much praiſe cannot be given to this *conſtitutional definition* of treaſon, and the requiring ſuch full proof for conviction; and declaring, that no attainder of treaſon ſhall work corruption of blood, or forfeiture, except during the life of the perſon attainted.

This *conſtitutional* definition of *treaſon* is a queſtion of *law*. Every propoſition in any ſtatute (whether more or leſs diſtinct, whether eaſy or difficult to comprehend) is always a queſtion of *law*. What is the true meaning and true import of any ſtatute, and whether the caſe ſtated comes within it, is a queſtion of *law*, and not of *fact*.—The queſtion in an indictment for *levying war* againſt (or adhering to the enemies of) the United States, is—"Whether the *facts* ſtated do, or "do not amount to *levying war*,"—within the contemplation and conſtruction of the conſtitution?

It is the duty of the court in this caſe, and in all *criminal* caſes, to ſtate to the jury their opinion of the *law* ariſing on the facts; but the jury are to decide on the *preſent*, and in *all criminal* caſes, *both the law and the facts*, on their conſideration of the *whole* caſe.

It is the opinion of the court, that any inſurrection, or riſing of any body of people, within the United States, to attain or effect, by *force, or violence*, any object of a *great public nature*, or of *public and general (or national) concern*, is a *levying of war* againſt the United States, within the contemplation and conſtruction of *the conſtitution*.

On this *general position* the court are of opinion, that any *ſuch* inſurrection, or riſing to reſiſt, or to prevent, *by force or violence*, the execution of *any* ſtatute of the United States, for levying or collecting taxes, duties, impoſts, or exciſes; or for calling forth the militia to execute the laws of the Union, or for any other object of a general nature or national concern, under any pretence, as that the ſtatute was unjuſt, burthenſome, oppreſſive, or unconſtitutional, is a levying war againſt the United States, within the contemplation and conſtruction of *the conſtitution*.—The reaſon for this opinion is, that an inſurrec-

tion to reſiſt or prevent, *by force*, the execution of any ſtatute of the United States, *has* a *direct* tendency to diſſolve all the bands of ſociety, to deſtroy all order, and all laws; and alſo, all ſecurity for the lives, liberties, and property of the citizens of the United States.

The court are of opinion, that military weapons (as guns and ſwords, mentioned in the indictment) are not neceſſary to make *such insurrection or rising* amount to *levying war;* becauſe numbers may ſupply the want of *military weapons;* and *other instruments* may effect the intended miſchief: The *legal guilt of levying war* may be incurred without the uſe of military weapons, or military array.

The court are of opinion, that the aſſembling bodies of men, armed and arrayed in a warlike manner, for purpoſes *only of a* PRIVATE *nature*, is NOT TREASON; although the judges, or other peace officers ſhould be inſulted, or reſiſted; or even great outrages committed to the perſons, or property of our citizens.

The true criterion to determine whether *acts committed* are *treason*, or a *less* offence, (as a riot) is the *quo animo* or the intention with which the people did aſſemble. When the intention is *universal*, or *general*, as to effect ſome object of a *general public nature*, it will be *treason;* and cannot be conſidered, conſtrued, or reduced to a riot. The commiſſion of any number of *felonies*, *riots*, or other miſdemeanors cannot alter *their nature*, ſo as to make them *amount to treason;* and, on the other hand, if the *intention and acts combined amount to treason*, they cannot *be sunk down to a felony, or riot.* The *intention* with which any acts (as felonies, the deſtruction of property, or the like) are done, will ſhow to what *class of crimes*, the caſe belongs.

The court are of opinion, that if a body of people conſpire and meditate an inſurrection to *resist or oppose the execution of any statute of the United States by force*, that they are *only guilty of a high misdemeanor;* but if they proceed to carry *such intention into execution*, BY FORCE,—that they are guilty of the *treason of levying war;* and the quantum of the force employed neither *leſſens*, nor *increases* the crime; whether by one hundred, or one thouſand perſons, is wholly immaterial.

The court are of opinion, that a *combination, or conspiracy* to *levy war* againſt the United States is *not treason*, unleſs combined with an attempt to carry ſuch combination, or conſpiracy, into execution; ſome actual force, or violence, muſt be uſed, in purſuance of *such design to levy war;* but that it is altogether immaterial, whether the force uſed is ſufficient to effectuate the object; *any force connected with the intention*, will conſtitute the crime of *levying war.*

This opinion of the court is founded on the *same principles*, and is, in *ſubſtance*, the *same*, as the opinion of the circuit court, for this diſtrict, on the trials (in April 1795) of Vigol and Mitchell, who were both found guilty by the jury, and afterwards pardoned by the *late* Preſident.

At the circuit court for the diſtrict (April term 1799) on the trial of the priſoner at the bar, Judge Iredell *delivered* the ſame opinion, and Fries was convicted by the jury.

To support the present indictment against the prisoner at the bar, *two* facts must be proved to your satisfaction:

First. That some time *before* the finding of the indictment, there was an insurrection (or rising) of a body of people in the *county of Northampton*, in this State, *with intent* to oppose and prevent, by means of *intimidation and violence*, the execution of a law of the United States, intituled "An Act to provide for the valuation of lands and dwelling-houses, the enumeration of slaves within the United States;" OR, of another law of the United States, intituled "An Act to lay and collect a direct tax within the United States:" and that *some acts of violence* were committed by *some* of the people so assembled, *with intent* to oppose and prevent, by means of intimidation, and violence, the execution of both, or of *one* of the said laws of congress.

In the consideration of this *fact*, you are to consider and determine with what *intent* the people assembled at Bethlehem, whether to effect, by force, a *public* or a *private* measure.

The intent with which the people assembled at Bethlehem, in Northampton, is a *necessary* ingredient t the *fact of assembling*, and to be proved like any other fact, by the *declarations* of those who assembled; or by *acts* done by them. When the question is, "What is a man's intent?"—It may be proved by a number of *connected circumstances;* or by a *single fact.*

If from a careful examination of the evidence, you shall be *convinced*, that the *real* object and intent of the people assembled at Bethlehem was of a *public nature*, (which it certainly was, if they assembled with intent to prevent the execution of *both* of the above-mentioned laws of congress, or either of them) it must then be proved to your satisfaction, that the prisoner at the bar, incited, encouraged, promoted, *or assisted* in the insurrection, or rising of the people, at Bethlehem, and the terror they carried with them, *with intent* to oppose and prevent, by means of intimidation *and violence*, the execution of both the above-mentioned laws of congress, or either of them; and that *some force* was used by *some* of the people assembled at Bethlehem.

In the consideration of this fact, the court think proper to assist your inquiry by giving you their opinion.

In treason, all the *participes criminis* are principals; there are no accessaries to this crime. Every act, which in the case of *felony*, would render a man an accessary, will, in the case of *treason*, make him a *principal.* To render any person an *accomplice and principal* in *felony*, he must be aiding and abetting *at the fact*; or ready to afford assistance, if *necessary.* If a person be present at a *felony*, aiding and assisting, he is a principal. It is always *material* to consider whether the persons charged are of the *same party;* upon the *same* pursuit; and under the expectation of *mutual defence* and *support.*—All persons *present*, aiding, assisting, or abetting any *treasonable act*, are *principals.* All persons, who are present and countenancing, and are ready to afford assistance, if necessary, to those who actually

commit any *treasonable act*, are alſo *principals*. If a number of perſons aſſemble and ſet out upon a *common design*, as to reſiſt and prevent, by force, the execution of any law, and ſome of them commit acts of force and violence, *with intent* to oppoſe the execution of any law, and others are preſent to aid and aſſiſt, if neceſſary, they are all *principals*. If any man *joins and acts* with an aſſembly of people, his intent is always to be conſidered and adjudged to be the ſame as theirs; and the law, in this caſe, judgeth of the *intent* by the FACT. If a number of perſons combine or conſpire to effect a certain purpoſe, as to oppoſe, by force, the execution of a law, any act of violence done by any one of them, in purſuance of ſuch combination, and with intent to effect *ſuch* object, is, in conſideration of law, the act of all who are preſent when ſuch act of violence is committed. If perſons collect together to act *for one and the ſame common end*, any act done by any one of them, with intent to effectuate ſuch common end, is *a fact* that may be given in evidence againſt all of them; the *act of each* is evidence againſt ALL concerned.

I ſhall not detain you at this late hour to recapitulate the facts;—you have taken notes, and they have been ſtated with accuracy, and great candor, by Mr. Attorney.

I will only remark, that all the evidence relative to tranſactions before the aſſembling of the armed force at Bethlehem, are only to ſatisfy you of the *intent* with which the body of the people aſſembled there. If either of the three overt acts (or open deeds) ſtated in the *indictment*, are proved to your ſatisfaction, the court are of opinion, that it is ſufficient to maintain the indictment; for the court are of opinion that every overt act is treaſonable.

As to accomplices—they are legal witneſſes, and entitled to credit, unleſs deſtroyed by teſtimony in court.

If, upon conſideration of the *whole* matter (law as well as fact) you are *not* fully ſatisfied, *without any doubt*, that the priſoner is guilty of the *treason* charged in the indictment, you will find him *not guilty*; but if, upon conſideration of the *whole* matter, (law as well as *fact*) you are convinced that the priſoner is guilty of the treaſon charged in the indictment, you will find him guilty.

The jury retired, for the ſpace of two hours, and brought in their verdict, GUILTY.

After the verdict was given, Judge Chaſe, with great feeling and ſenſibility, addreſſed the priſoner, obſerving that as he had no counſel on the trial, if he, or any perſon for him, could point out any flaw in the indictment, or legal ground for arreſt of judgment, ample time would be allowed for that purpoſe.

FRIDAY, *May* 2.

The Court this morning called before them Charles Deſſler, a juror on the above trial of John Fries, who, on the firſt evening of the ſaid trial, on the adjournment of the court, ſeparated from the jury and retired to his lodgings. Mr. Hopkinſon, in behalf of Mr. Deſſler, produced his own affidavit, and that of two others, which proved,

that on the said evening, Charles Deshler was inadvertently separated from his brethren by the crowd, in going out of the jury box; that he did not know to what place the jury had adjourned; that he then proceeded to his lodgings, where he cautiously avoided all conversation respecting the trial depending.—The court, satisfied by this representation, of the innocence of Mr. Deshler, ordered that he be discharged, and that the before-mentioned affidavit be entered on the record of the court.

JUDGMENT.

Judge Chase's Address.

The prisoner being set at the bar, Judge Chase, after observing to Hainey and Gettman that what he had to say to Fries would apply generally to them, the judge proceeded—

JOHN FRIES—You have been already informed, that you stood convicted of the *treason*, charged upon you by the indictment on which you have been arraigned, of *levying war* against the United States.—You have had a LEGAL, FAIR and IMPARTIAL trial, with every indulgence that the law would permit. Of the whole pannel, you PEREMPTORILY challenged thirty-four, and, with truth I may say, that the jury who tried you, were of your *own selection and choice*. Not one of them *before* had ever formed and delivered any opinion respecting your guilt or innocence. The verdict of the jury against you was founded on the testimony of many creditable and unexceptionable witnesses. It was apparent from the conduct of the jury, when they delivered their verdict, that if *innocent* they would have acquitted you with pleasure; and that they pronounced their verdict against you with great concern and reluctance, from a sense of duty to their country, and a *full conviction* of your guilt.

The crime of which you have been found guilty is *treason;* a crime considered, in the most civilized and the most free countries in the world, as the *greatest* that any man can commit. It is a crime of so deep a dye, and attended with such a train of fatal consequences, that it can receive no aggravation; yet the duty of my station requires, that I should explain to you the *nature of the crime* of which you are convicted; to show the *necessity of that justice*, which is this day to be administered; and to awaken your mind to proper reflections and a due sense of your own condition, which I imagine you must have reflected upon during your long confinement.

You are a *native* of this country—You live under a constitution (or form of government) framed by the people themselves; and under laws made by *your* representatives, faithfully executed by independent and impartial judges. Your government secures to every member of the community *equal liberty* and *equal rights*; by which equality of *liberty* and *rights* I mean, that every person, without any regard to

wealth, rank or ſtation, may enjoy an *equal* ſhare of *civil liberty*, an *equal* protection of *law*, and an *equal* ſecurity for his *person* and *property*.—You enjoyed, in common with your fellow-citizens, *all those rights*.

If experience ſhould prove, that the *conſtitution* is defective, *it* provides a mode to *change or amend* it, without any danger to public order, or any injury to *ſocial* rights.

If Congreſs, from inattention, error in judgment, or want of information, ſhould paſs any law in violation of the conſtitution; or burthenſome, or oppreſſive to the people, a peaceable, ſafe and *ample* remedy is provided by the *conſtitution*. The people themſelves have eſtabliſhed the *mode* by which *ſuch grievances* are to be redreſſed; and no *other mode* can be adopted, without a violation of the conſtitution and of the laws.—If Congreſs ſhould paſs a law contrary to the *conſtitution*, ſuch law would be *void*, and the courts of the United States poſſeſs complete authority, and are the only tribunal to decide, whether any law is contrary to the *conſtitution*.—If Congreſs ſhould paſs *burthenſome* or *oppreſſive* laws, the remedy is with their conſtituents, from whom they derive their exiſtence and authority. If any law is made, repugnant to the voice of a *majority* of their conſtituents, it is in their power to make choice of perſons to repeal it; but until it is repealed, it is the duty of every citizen to ſubmit to it, and to give up his *private* ſentiments to the *public will*. If a law burthenſome, or even oppreſſive in its *nature* or *execution* is to be oppoſed by *force*, and obedience cannot be compelled, there muſt ſoon be an end to all government in this country.—It cannot be credited by *diſpaſſionate* men, of any information, that Congreſs will *intentionally* make laws in violation of the conſtitution, contrary to their ſacred truſt, and ſolemn obligation to ſupport it. None can believe, that Congreſs will *wilfully*, or *intentionally*, impoſe unreaſonable and unjuſt burthens on their conſtituents, in which they *muſt participate*. The moſt ignorant man muſt know, that Congreſs can make *no law* that will not affect them *equally*, *in every reſpect*, with their conſtituents. Every law that is detrimental to their conſtituents, muſt prove hurtful to themſelves. From theſe conſiderations, every one may ſee, that Congreſs can have *no intereſt in oppreſſing their fellow-citizens*.

It is almoſt incredible, that a people living under the beſt and mildeſt government in the whole world, ſhould not only be diſſatisfied and diſcontented, but ſhould break out into open reſiſtance and oppoſition to its laws.

The inſurrection in 1794, in the four weſtern counties of this ſtate (particularly in Waſhington) to oppoſe the execution of the laws of the United States, which laid duties on ſtills, and ſpirits diſtilled, within the United States, is ſtill freſh in memory: it originated from prejudices and miſrepreſentations induſtriouſly diſſeminated and diffuſed againſt thoſe laws. Either perſons diſaffected to our government, or wiſhing to aggrandiſe themſelves, deceived and miſled the ignorant and uninformed claſs of the people. The oppoſition commenced in meetings of the people, with threats againſt the officers, which ripened into acts of outrage againſt *them*, and were extended

to *private* citizens. Committees were formed to ſyſtamatize and inflame the ſpirit of oppoſition. Violence ſucceeded to violence, and the collector of Fayette county was compelled to ſurrender his commiſſion and official books ; the dwelling houſe of the inſpector (in the vicinity of Pittſburgh) was attacked and burnt; and the marſhal was ſeized, and obtained his liberty on a promiſe to ſerve no other proceſs on the *west side of the Alleghany mountain*. To compel ſubmiſſion to the laws, the government were obliged to march an army againſt the inſurgents, and the expenſe was above one million one hundred thouſand dollars. Of the whole number of inſurgents (many hundreds) only a *few* were brought to trial; and of them only *two* were ſentenced to die (Vigol and Mitchell) and they were pardoned by the late Preſident. Although the inſurgents made no reſiſtanceto the army ſent againſt them; yet not a few of our troops loſt their lives, in conſequence of their great fatigue, and expoſure to the ſeverity of the ſeaſon.

This great and remarkable clemency of the government had no effect upon *you* and the deluded people in your neighborhood. The riſe, progreſs, and termination of the *late* inſurrection, bear a ſtrong and ſtriking analogy to the former: and it may be remembered, that it has coſt the United States 80,000 dollars. It cannot eſcape obſervation, that the ignorant, and uninformed are taught to complain of taxes, which are neceſſary for the ſupport of government, and yet they permit themſelves to be ſeduced into inſurrections which have ſo enormouſly increaſed the public burthens, of which their contribution can ſcarcely be calculated.

When citizens combine and aſſemble with intent to prevent by threats, intimidation, and violence, the execution of the laws, and they actually carry ſuch traitorous deſigns into execution, they reduce the government to the alternative of proſtrating the laws before the inſurgents, or of taking neceſſary meaſures to compel ſubmiſſion. No government can heſitate. The expence, and all the conſequences therefore, are not imputable to the government, but to the inſurgents. —The mildneſs and lenity of our government are as ſtriking on the *late* as on the *former* inſurrection ; Of nearly 130 perſons who might have been put on their trial for *treason*, only five have been proſecuted and tried for that crime.

In the late inſurrection, you, John Fries, bore a conſpicuous and leading part. If you had reflected, you would have ſeen, that your attempt was as weak, as it was *wicked*. It was the height of folly in you to ſuppoſe that the great body of our citizens, bleſt in the enjoyment of a free republican government of their own choice, and of all rights civil and religious,—ſecure in their perſons and property, and conſcious that the laws are the only ſecurity for their preſervation from violence, would not riſe up as one man to oppoſe and cruſh ſo ill-founded, ſo unprovoked an attempt to diſturb the public peace and tranquillity. If you could ſee in a proper light your own *folly* and *wickedness*, you ought now to bleſs God, that your inſurrection was ſo happily and ſpeedily quelled by the vigilance and energy of our government, aided by the patriotiſm and activity of your fellow-citizens, who

left their homes and buſineſs and embodied themſelves in the ſupport of its laws.

The annual, neceſſary expenditures for the ſupport of any extenſive government, like ours muſt be great; and the ſum required, can only be obtained by *taxes*, or loans.—In all countries the levying taxes is unpopular, and a ſubject of complaint. It appears to me, that there was not the leaſt pretence of complaint againſt, much leſs of oppoſition and violence to, the law for levying taxes on dwelling-houſes; and it becomes you to reflect that the time you choſe to riſe up in arms to oppoſe the laws of your country, was when it ſtood in a very critical ſituation with regard to France, and on the eve of a rupture with that country.

I cannot omit to remind you of another matter, worthy of your conſideration.—If the marſhal or any of the poſſee, or any of the four friends of government, who were with him, had been killed by you, or any of your deluded followers, the crime of *murder* would have been added to the crime of *treason*.

In your ſerious hours of reflection, you ought to conſider the conſequences that would have flowed from the inſurrection, which you incited, encouraged, and promoted, in the character of a captain of militia, whoſe incumbent duty it is to ſtand ready (whenever required) to aſſiſt and defend the government and its laws, if it had not been immediately quelled. Violence, oppreſſion, and rapine; deſtruction, waſte, and murder, always attend the progreſs of inſurrection and rebellion; the arm of the father would have been raiſed againſt the ſon; that of the ſon againſt the father; a brother's hand would have been ſtained with brother's blood; the ſacred bands of friendſhip would have been broken, and all the ties of natural affection would have been diſſolved.

The end of all *punishment* is *example;* and the enormity of your crime requires that a ſevere example ſhould be made to deter others from the commiſſion of *like* crimes in future. You have forfeited your life to juſtice—let me therefore earneſtly recommend to you, moſt ſeriouſly to conſider your ſituation—to take a review of your paſt life, and to employ the very little time you are to continue in this world, in endeavors to make your peace with that God, whoſe MERCY is equal to his JUSTICE. I expect that you are a Chriſtian; and as *such* I addreſs you. Be aſſured my guilty and unhappy fellow-citizen, that without ſerious repentance of *all* your ſins, you cannot expect happineſs in the world to come; and to your repentance you muſt add *faith* and *hope* in the merits and mediation of Jeſus Chriſt. Theſe are the *only terms* on which pardon and forgiveneſs are promiſed to thoſe, who profeſs the *Christian* religion. Let me therefore again entreat you to apply every moment you have left, in contrition, ſorrow, and repentance. Your *day* of *life* is almoſt ſpent, and the *night* of *death* faſt approaches. Look up to the Father of Mercies, and God of Comfort. You have a great and an immenſe work to perform, and but little time in which you muſt finiſh it. There is no repentance in the grave; for after death comes judgment; and as you die, ſo you muſt be judged. *By repentance and faith*, you are the object of God's *mercy;* but if you will *not* repent, and have faith and dependance upon the merits

of the death of Chriſt, but die a hardened and impenitent ſinner, you will be the object of God's *justice* and vengeance. If you will ſincerely *repent and believe*, God hath pronounced his forgiveneſs; and there is no crime too great for his mercy and pardon.

Although you muſt be ſtrictly confined for the very ſhort remainder of your life, yet the mild government and laws which you have endeavored to deſtroy, permit you (if you pleaſe) to converſe and commune with miniſters of the goſpel; to whoſe pious care and conſolation, in fervent prayers and devotion, I moſt cordially recommend you.

What remains for me is a very painful, but a very neceſſary part of my duty. It is to pronounce that judgment, which the law has appointed for crimes of this magnitude. The judgment of the law is, and this Court doth award "that you be hanged, by the neck, *until dead:*" And I pray GOD ALMIGHTY to be merciful to your ſoul!

The following Charge, by Judge Peters, was delivered to the Jury before the Charge of Judge Iredell, in the first Trial, and ought to precede it in Page 164, *but was unavoidably omitted in its proper place.*

GENTLEMEN OF THE JURY,

AS this caſe is important, both in its principles and conſequences, I think it my duty to give my opinion, formed with as much deliberation as the intervals of this lengthy trial would permit, on the moſt prominent points of law which have been made in this cauſe. I have condenſed my ſentiments into as ſhort a compaſs as poſſible. I ſhall leave remarks on the evidence, and more enlarged obſervations on the law, to the preſiding judge, who will deliver to you the charge of the court. At his requeſt I ſtate my individual opinion, though I do not always deem it neceſſary, when there is an unanimity of ſentiment in the court.

1. It is *treason* "in levying war againſt the United States" for perſons *who have none but a common interest with their fellow-citizens*, to oppoſe or prevent, by force, numbers or intimidation, a *public* and *general* law of the United States, *with intent* to prevent its operation, or compel its repeal. Force is neceſſary, to complete the crime; but the quantum of force is immaterial. This point was determined by this court on a former occaſion, which was, though not in all circumſtances, yet in principle and object, very analogous to the ſubject of our preſent inquiries. I hold myſelf bound by that deciſion, which on due conſideration, I think legal and ſound. I do not conceive it to be overſhadowed, or rendered null, by any legiſlative conſtruction contained in any ſubſequent act of congreſs. The law, though eſtabliſhed by legiſlative acts, or ſettled by judicial deciſions, may be altered by congreſs, *by express words*, in laws conſiſtent with the con-

ſtitution. But a mere legiſlative conſtruction, drawn from any act by intendment, ought not to repeal poſitive laws, or annul judicial deciſions. The *judiciary* have the duty aſſigned to them of interpreting *declaring* and *explaining*,—the *Legislature* that of *making*, *altering*, or *repealing* laws. But the deciſion of a queſtion on the conſtitutionality of a law is veſted in the judiciary department. I conſider the deciſions in the caſes of Vigol and Mitchell, in full force, and founded on true principles of law. The authorities from Britiſh precedents and adjudications are uſed as guides in our deciſions. I will not enter into a diſcuſſion whether we are bound to follow them; becauſe they are precedents,—or becauſe we think them reaſonable and juſt.

If numbers and force can render one law ineffectual, which is tantamount to its repeal, the whole ſyſtem of laws may be deſtroyed in detail. All laws will at laſt yield to the violence of the ſeditious and diſcontented. Although but one law be immediately aſſailed, yet the treaſonable deſign is completed, and the generality of intent deſignated, by *a part* aſſuming the government of *the whole*. And thus, by trampling on the legal powers of the conſtituted authorities, the rights of all are invaded by the force and violence of a few. In this caſe, too, there is a direct outrage on the judiciary act, with intent to defeat, by force and intimidation, the execution of a revenue law, enacted under clear and expreſs conſtitutional authority. A deadly blow is aimed at the government, when its fiſcal arrangements are forcibly deſtroyed, diſtracted and impeded; for on its revenues its very exiſtence depends.

2. Though puniſhments are deſignated, by particular laws, for certain *inferior* crimes, which, if proſecuted as ſubſtantive offences, and the ſole object of the proſecution, are excluſively liable to the penalties directed by thoſe laws, yet, when committed with treaſonable ingredients, theſe crimes become only circumſtances or overt acts. The intent is the giſt of the inquiry in a charge of treaſon; and is the great and leading object in trials for this crime.

The deſcription of crimes, contained in the act, commonly called the *Sedition Act*, loſe their character, and become but component parts of the greater crime, or evidences of treaſon, when the treaſonable intent and overt act are proved. So it is with *rescue of priſoners;* which, in the preſent caſe, was not an independent offence, but an *overt act of the treason*. Theſe were crimes—miſdemeanors —at common law; and might have been puniſhed by fine and impriſonment when ſubſtantive independent offences. But, when committed with treaſonable intent, are merged in the treaſon, of which ſedition, conſpiracy and combination are always the harbingers. I do not think that the acts relating either to *sedition* or *rescue* have altered the principle, though they have defined and bounded the puniſhments. The law, as to treaſon, is the ſame now, as if thoſe offences were ſtill puniſhable at common law. The *Sedition Act* cannot conſtitutionally alter the deſcription or the crime of *treason*, to which the combination and conſpiracy to perpetrate this offence, with force and numbers, are eſſential attributes. Numbers muſt *combine* and *conspire*

to levy war. But if theſe indiſpenſible qualities of the crime are, by the Legiſlature, declared only *misdemeanors*, and ſeparated from the treaſonable act, the Legiſlature nullify the deſcription of *treason* contained in the conſtitution; and ſo indirectly alter and deſtroy, or make inefficient, this part of that inſtrument. The congreſs neither poſſeſs, nor did they intend to exerciſe, any ſuch power. They could not (nor did they ſo intend) place the crime declared in the conſtitution to be *treason*, among the inferior claſs of offences, by deſcribing ſome of its eſſential qualities in the Sedition Act, and preſcribing puniſhments, when they ſolely conſtitute ſubſtantive and independent offences. Congreſs can only (as they have done) preſcribe the puniſhment for *treason*, regulate the trial, and direct the mode in which that puniſhment is to be executed.

3. However indiſputably requiſite it may be to prove, by two witneſſes, the overt act for which the priſoner at the bar ſtands indicted, yet evidence may be given of other circumſtances, or even of other overt acts, connected with that on which the indictment is grounded, and occurring or committed in any other part of the diſtrict, than the place mentioned. Although the priſoner be not on his trial, nor is he now puniſhable, for any other than the overt act laid, other overt acts and other circumſtances, parts of the general deſign, may nevertheleſs be proved, to ſhew the *quo animo*—*the intent*—with which the act laid was committed. Indeed the treaſon would be complete, by the conſpiracy, in any part of the diſtrict, to commit the treaſonable act at Bethlehem, if any had, in conſequence of the conſpiracy, marched or committed any overt act for the purpoſe, though the actual reſcue had not taken place. So we thought in the caſes of the weſtern inſurgents, that the treaſon, concocted at Couche's fort, would have been complete, if any had only marched to commit the crime; though the deſign had not arrived to the diſgraceful cataſtrophe it finally attained. Indiſputable authorities might be produced to ſupport this poſition.

4. The confeſſion of the priſoner may be given in evidence as corroboratory proof of the *intent*, or *quo animo*. But, although proved by two witneſſes, being made *out of court*, it is not of itſelf ſufficient to convict. Two witneſſes are neceſſary to prove the overt act. But the intent may be proved by one witneſs, collected from circumſtances, or even by a ſingle fact.

5. The doctrine of *conſtructive treason* has produced much real miſchief in another country; and it has been, for an age, the ſubject of diſcuſſions, among lawyers, other public ſpeakers and political writers. The greater part of the objections to it are totally irrelevant here.—The ſubject of them is unknown, and may it ever remain ſo, in this country. I mean the compaſſing the death of the king. It will be found that the Britiſh judges, ſince the days of political darkneſs and bigotry have paſſed away, are to be found among the moſt able and decided oppoſers of the abuſes of this doctrine. They do not follow deciſions and precedents rooted in bad times, becauſe they find them in their law books. On the contrary, on a fair inveſtigation it will be proved, that thoſe contrary to juſtice, reaſon and law are reject-

ed. It is not fair and ſound reaſoning to argue againſt the neceſſary and indiſpenſable *use* of conſtruction, from the *abuses* it has produced. What is there among the beſt of *human* (and I wiſh I could not add *divine*) ſyſtems which has not been perverted and abuſed? That there muſt be ſome defined ſenſe and interpretative expoſition made of the terms "*levying war*," and when, and in what circumſtances, it is levied "*against the United States*," cannot be denied. The able counſel, in this caſe, who has ſaid the moſt on this ſubject, and travelled the fartheſt into the gloomy, dark and tyrannical periods of the Britiſh hiſtory and juriſprudence, for melancholy and diſguſting proofs of atrocious abuſes, and even crimes, committed under color of law, has, unavoidably, himſelf furniſhed alſo proofs of the neceſſity we are under of ſome conſtructive or interpretative expoſitions. He, at firſt, confined theſe expoſitions to *three* caſes. Now if there is a neceſſity of *one*, it ſhews that without ſupplementary interpretation, the law would be a mere dead letter. Aware of the dangerous lengths to which the abuſes of conſtruction have been carried, courts and juries ſhould be cautious in their deciſions; but not ſo much alarmed about *abuses*, as to refrain from the proper and neceſſary *use* of interpretation. I do not then heſitate to ſay, that the poſition we have found eſtabliſhed, to wit, that oppoſition, by force and numbers, or intimidation with intent to defeat, delay or prevent the execution of a general law of the United States, or to procure, or with a hope of procuring, by force and numbers, or intimidation, its repeal or new execution, is treaſon by levying war againſt the United States. And it does not appear to me to be what is commonly called *constructive*, but *open and direct* treaſon, in levying war againſt the United States, within the plain and evident meaning and intent of the conſtitution.

6. As to the objections, founded on want of proof of regular appointments under, and of the proper execution of the law called the houſe tax law, I do not ſee that they apply. If the proſecution was definitely for oppoſing one or more officer or officers of this tax law, the proof might be more rigidly required. But as all the neceſſary uſe made of theſe collateral and ſubordinate circumſtances, relative to the tax law officers, is for the purpoſe of ſhowing the *quo animo* or *intent* with which the treaſon alledged was committed, I conſider them as not relevant in this cauſe. It is even enough in criminal proſecutions, more directly aimed at the ſpecific offence of oppoſing an officer, that he was an officer *de facto*.

7. As to the diſarming and confining the two Videlles, or advance, of the armed inſurgents, by the marſhal at Bethlehem, I think him legally as well as prudentially juſtified in his conduct. Even a conſtable has a right to reſtrain and confine, under ſtrong circumſtances of ſuſpicion, perſons whoſe conduct or appearance evidence an intention to commit illegal and violent acts. Much more ſo was the marſhal (having notice of an intended reſcue of his priſoners) juſtifiable in ſeizing and diſarming two of the armed body, againſt whom exiſting circumſtances raiſed ſtrong and evident ſuſpicion. But I think this has been made more important than it really is. Becauſe the releaſe of theſe men was not the object of, or even known to the priſoner at the bar

and his party, when they commenced their treaſonable march, for the releaſe of the priſoners in the marſhal's cuſtody, at Bethlehem.

8. The Preſident's proclamation ſhould have been *pleaded* as a pardon, if it was intended to be relied on as ſuch. This not having been done, it is not legally before us. But ſince it has been mentioned, I think it neceſſary to declare it as my opinion, that it does not operate as a pardon to precedent offences. It is directed by law as a ſtep, preparatory to applying an armed force, againſt thoſe ſuppoſed to have committed crimes and embodied for unlawful purpoſes. It is a humane warning, calculated to prevent the effuſion of blood? Its allegations of facts, or its injunctions, have no operation in the trial of the priſoner at the bar.

Whether the priſoner is or is not guilty of the treaſon laid in the indictment, in the manner and form therein ſet forth, it is your province to determine. It is the duty of the court to declare the law; though both facts and law, which I fear are too plain to admit a reaſonable doubt, are ſubjects for your conſideration. We muſt all obey our public duty, whatever may be our private feelings. Mercy is not depoſited in our hands. It is entirely within the conſtitutional authority of another department.

The following opinion of Judge Peters on the motion for a new trial was put into our hands after the ſheet was printed were it ſhould have come in, which is page 45 of the appendix.

ALTHOUGH I am not perfectly ſatisfied with the teſtimony, which is contradicted by the juror on his oath; I will allow it to be taken for granted; and meet the queſtion on principle. I am in ſentiment againſt granting the motion for a new trial. Becauſe—1. The juror ſaid no more than all friends to the laws and the government were warranted in thinking and ſaying, as the facts appeared then to the public. Fries being generally alledged to be the moſt preminent character, it was on this account, and *not with special or particular malice*, that Rhoad's declaration was made.

2. If a juror was rejected on account of ſuch declarations, trials, where the community at large are intimately affected by crimes of ſuch general importance and public notoriety, muſt be had, in all probability, by thoſe who only openly or ſecretly approved of the conduct of criminals. This would be unjuſt and improper, as it affects the government in its public proſecutions. Little ſucceſs could be expected from proceedings againſt the moſt atrocious offenders, if great multitudes were implicated in their deluſions, or guilt.

3. It is natural for all good citizens when atrocious crimes, of a public nature, are known to have been committed, to expreſs their abhorrence and diſapprobation, both of the offences and the perpetrators. It is their duty ſo to expreſs themſelves. This is not like the

caſe of murder, or any offence againſt an individual; or where ſeveral are charged and none remarkably prominent. In this latter caſe ſelecting *one* out of the maſs might evince *particular malice.*

4. I have no doubt that declarations of an oppoſite complexion could be proved; and yet the jurors were unanimous in their verdict. The defendant has had a fair, and I think an impartial trial.

But as a diviſion in the court, might leſſen the weight of the judgment if finally pronounced, and the great end of the law in puniſhments being *example*, I, with ſome reluctance, yield to the opinion of judge Iredell. Although juſtice may be *delayed*, yet it will not *fail*, either as it reſpects the United States, or the priſoner.

SATURDAY, *April* 26, 1800.

CONRAD MARKS

Was arraigned on an indictment for treaſon *. He pleaded, *Not Guilty.*

The following PERSONS *were admitted and ſworn on the* JURY.

Richard Downing,	John Jacobs,
Thomas Morris,	Benjamin Morris,
Jacob Grim,	Anthony Oberly,
Eli Canby,	John Longſtreith,
Richard Roberts,	William Davis,
Francis Gardner,	Llwellin Davis.

The cauſe was opened by the attorney of the diſtrict, (Mr. Rawle) who ſtated the nature of the offence of which the priſoner ſtood indicted, and adduced a number of witneſſes on the part of the proſecution. Several witneſſes were alſo produced on the part of the priſoner. Mr. Roſs and Mr. Hopkinſon, who were the counſel aſſigned by the court for the priſoner, very ably and ingeniouſly defended his cauſe, at ſome length; and were fully anſwered by Mr. Ingerſol on the part of the proſecution. Judge Chaſe, in an elegant, learned and feeling charge, addreſſed the jury, informing them of the law, and reciting the facts as they appeared in evidence. The jury retired about twenty minutes paſt 11 o'clock at night. Judge Chaſe informed the jury, previous to their retiring, that the court would wait till twelve o'clock, to ſee if they could agree on their verdict; and that they muſt return to court and inform whether they could agree or not. At that hour the jury returned and informed the court, that they could not agree. The judges ordered that the jury be kept together in ſome conve-

* *The conduct of Conrad Marks in this transaction, might be ſeen in the courſe of the evidence on the firſt trial of John Fries.*

nient place till Monday morning at ten o'clock, to which time the court adjourned.

On Monday morning the jury returned a verdict, NOT GUILTY.

An indictment was afterwards filed againſt the defendant for conſpiracy, obſtruction of proceſs, reſcue and unlawful combination, on which he ſubmitted to the diſcretion of the court.

Without any farther examination, the court being fully appriſed of his conduct, Judge Chaſe paſſed the following ſentence:

That he be impriſoned two years, and fined 800 dollars, at the expiration of which, to give ſecurity for his good behavior, himſelf in 2000 dollars, and two ſureties in 1000 dollars each, and to ſtand committed till the ſentence is complied with.

Before the ſentence, Mr. Roſs addreſſed a few words to the court in his behalf: he obſerved, that though his client had offended againſt the laws of his country, yet he had been deceived into his oppoſition: it had been ſaid, from what he thought undoubted authority, that no ſuch law was in exiſtence. As this was the caſe, and as his circumſtances were low, he hoped the court would conſider his ſituation.

JUDGE CHASE ſaid, he was a moſt *atrocious* offender; he had not the leaſt doubt but he was guilty of treaſon in a high degree, and that the verdict ought ſo to have been found, and *he* have been made an example of. There muſt have been ſome miſtake as to evidence, or the jury could not have returned a verdict of NOT GUILTY.

MONDAY, *April* 28.

GEORGE GETTMAN & FREDERICK HAINEY

Were arraigned on an indictment for treaſon, to which they pleaded, *Not Guilty*.

The Counſel for the Priſoners were Mr. EDWARD TILGHMAN and Mr. MOSES LEVY.

The following PERSONS *were the* JURY:

Francis Gardner,	Samuel Clarkſon,
Samuel Evans,	Peter Shyner,
William Preſton,	Samuel Allen,
Richard Roberts,	John Stroud,
William Lane,	Philip Arndt,
Godfrey Baker,	William Davis.

The trial took up two days; and on Wedneſday morning the jury returned with a verdict of GUILTY.

WEDNESDAY, *April* 30.

ANTHONY STAHLER

Was arraigned on an indictment for treaſon, to which he pleaded, *Not Guilty*.

The Counſel for the Priſoner were, MR. HOPKINSON and MR. Ross.

The following were ſworn on the JURY:

Richard Robinſon,	Jacob Grim,
Charles Deſhler,	David Jones,
George Illig,	William Preſton,
John Starbord,	Thomas Morris,
John Jones,	Peter Eler,
John Edge,	Abraham Heed.

The jury, on Thurſday morning, returned with a verdict of NOT GUILTY.

The attorney lodged a detainer on a charge of conſpiracy, &c. and on Friday morning the grand jury returned againſt him *a true Bill*.

Indictments for treaſon had been found againſt Philip Deſch and Jacob Klein; but Mr. Attorney entered a *nolle proſeque* thereupon, and proſecuted for conſpiracy, reſcue, &c. upon which the grand jury returned *true Bills*.

They ſubmitted to the court; and after examining a few witneſſes, and aſcertaining their circumſtances as near as poſſible, the court ſentenced each of them to be impriſoned eight months, to be fined 150 dollars, and to enter into recognizance for their good behavior for one year, themſelves in 400 dollars each, with two ſufficient ſureties.

A

BRIEF REPORT

OF THE

TRIALS

Of Henry Shiffert, Christian Ruth, Henry Stahler, Daniel, Schwartz, sen. Daniel Schwartz, jun. and George Shaeffer, on an indictment for an unlawful conspiracy in the counties of Northampton and Bucks, to impede the operation of the act laying a tax on houses and land by opposing the assessors in the execution of their duty; for obstructing William Nichols esq. the marshal in the execution of process, and for assisting in the rescue of several persons held in custody by the said marshal.

—

Friday May 10, 10 *o'clock A. M.*

THE jury being impannelled, Mr. M'Kean appeared as counsel for the prisoners generally, and Mr. Dallas more particularly for George Shaeffer.

COLONEL NICHOLS

The marshal was the first evidence called. He related the circumstances which occurred at Millar's town as it respected the rescue of Shankweiler, (see page 37.) and the absence of Shaeffer, who hearing that a bill of indictment was found against, him came to the city to deliver himself up.

SAMUEL TOON

Was next called. His deposition related to the conduct of the two Schwartz's and Stahler, differing very little from his former relation see (page 53 and 55) He was advised by old Schwartz to go to Bethlehem and take his trumpet, but was unwilling, however, at length he complied,

ANDREW SHIFFERT

Related the ſame facts in ſubſtance as before, (page 56.) He ſaw Chriſtian Ruth going to Bethlehem, and while he was preſent heard ſome perſon ſay they would take the priſoners from the marſhal.

WILLIAM BARNETT

And Chriſtian Roth's teſtimony related to the conduct of the elder Schwartz at Bethlehem page 36.

WILLIAM HENRY, ESQ.

Was next ſworn. He related the affairs generally as before reſpecting the conduct of Stahler page 26. and Shiffert page 82. alſo of old Schwartz, who appeared to pride himſelf in having two fine boys at Bethlehem.

JOHN FOGLE

A lieutenant in Jarrett's troop related ſome of the circumſtances previous to the march to Bethlehem—his evidence had nothing ſtriking in it, as he did not go himſelf, except that Shiffert at Millars town adviſed him to go to Bethlehem; and that if they would not take bail for Shankweiler, they would not let them go to Philadelphia.

JOHN MORETZ

Depoſed that he ſaw Stahler with others who ſaid that they would go to Bethlehem to ſee what they were going to do with the priſoners—they did not ſay they would releaſe the priſoners—he did not know them any way active in breeding diſcontents. At a meeting to read the law, (page 49) one, he believed George Shaeffer ſaid it was no law, and if it was, they would not ſubmit to it. He talked very loud, and appeared much diſſatisfied.

JACOB EYERLY

Went through his former evidence of the meeting at Schymer's page 49. and related the general ſtate of diſcontents through that part, and the proſtrate ſtate of the laws: many he ſaid objected to ſuffer the execution of the houſe law, becauſe it was not ſigned by Mr. Jefferſon as Vice Preſident (he being abſent at its paſſing)—Old Schwartz told the witneſs that two of his ſons were there at Bethlehem, and that he had perſuaded Toon to go, promiſing him a dollar, and lending him an horſe, adviſing him to take his trumpet that they might make a good appearance: that Daniel Schwartz, jun. tore off Mr. Balliott's cockade at Miller's town, and that they were both very abuſive.

CHRISTIAN HICKAVELTER

Depoſed, That he was an aſſeſſor in Upper Milford; he related the great difficulties attending the execution of his duty. Did not know any thing more of the defendants than what was related by Mr. Eyerly of George Shaeffer, page 49. He ſpoke of the elder Schwartz as a very quiet good neighbor,

JUDGE PETERS

Then was ſworn, to prove an examination of Schwartz, ſen. taken before him, which acknowledged that he had perſuaded Toon to go to Bethlehem, and that he was there himſelf, but that he did nothing, nor ſaid any thing about the reſcue; but that he went merely out of curioſity.

JACOB SERNHER

Depoſed, That he was told by George Shaeffer to tell Judge Henry to inform the aſſeſſors not to come into Millar's town to aſſeſs the houſes; for that there was a man in town who was provided with a ſword and piſtols, and that he would not ſuffer the houſes to be aſſeſſed. He did not mention to the witneſs who the man was.

DANIEL REISCH

Depoſed, That George Shaeffer had told him that he would not ſuffer his houſe to be meaſured, and he was a damned ſtampler if he ſuffered them to meaſure his: That if the aſſeſſor came into their town, he ſhould not come out again with his life: that they had bound themſelves together to oppoſe the execution of the law; and if he, the defendant, was to be put to priſon, there would be fifty men unite to take him out.

JOHN SCHYMER, ESQ.

Related the circumſtance of the meeting at his houſe, as depoſed by Mr. Eyerly, and that Shaeffer was very violent*.

The evidence being gone through, Mr. M'Kean roſe in the defence, in the courſe of which he went through a variety of authorities to prove, that no conſpiracy was formed, becauſe no compact whatever was entered into by the parties to ſupport each other, each individual acting and ſpeaking, ſo far as they went, ſeparately. Here he read, 1 Hawk, 346. chap. 72, and the Sedition Act. ſect. 1. As to the reſcue he ſaid, it did not appear that the defendant were engaged, for

* *The evidence applied to the defendants individually, is given more particularly in the charge of Judge Iredell.*

a reſcue could not be accompliſhed without force, but no force whatever had been proved upon them, 4 Blackſtone, 131, and 345; 2 Hawk. c. 21. ſect. 1—3; Pierre Williams, 484; 6 Comments, 230, and 2 Hawk, c. 19, ſect. 5, were the authorities he read. As to the oppoſition to the law, it appeared that they had doubts, which, in their uncultivated ſtate, and extreme want of knowledge, were well grounded, that the law was in exiſtence. He then concluded with a review of the part which the defendants were ſeverally ſaid to have taken in the tranſaction.

JUDGE PETERS

Read the legal definition of force in 2 Hawkins, page 37.

Mr. Dallas went into a lengthy defence of George Shaeffer, after which Mr. Rawle, attorney for the diſtrict, went into a definition of the different counts in the indictment of conſpiracy, unlawful combination, reſcue, and obſtruction of proceſs, applying the evidence ſo as to bring the charges home on the ſeveral defendants: that they all had been guilty of conſpiracy he thought incontrovertible; becauſe when a conſpiracy was formed, all who were ever preſent, as well as thoſe more actively engaged in it were guilty, though ſome might be ſuperiors and ſome ſubordinate. All the defendants were aſſembled, and therefore partook of the crime. Five of them were ſeen at Bethlehem: Andrew Shiffert ſaw Ruth going to Bethlehem, and Toon ſaw him at Bethlehem in company with the diſturbers of the public peace. Old Schwartz was at Bethlehem, and was engaged in counſelling and adviſing an unlawful aſſembling there, which was calculated to defeat the act. Young Schwartz was at Bethlehem, and alſo was engaged in the inſult upon Mr. Balliott to tear off his cockade. George Shaeffer was at Bethlehem; but, though not in arms, though not guilty of the reſcue, was frequently engaged in oppoſition to the law, in conſpiracy againſt it, and in obſtruction of proceſs, on which account he may be ranked among the moſt guilty. On the whole, he conſidered that each of them partook of the crimes charged in the indictment.

Judge Iredell, in his charge to the jury, obſerved, that there were three counts in the indictment: Firſt. Conſpiracy to prevent the execution of the law: to raiſe a conſpiracy, ſeveral muſt be engaged, but it muſt be obſerved that *every one* engaged, or joined therewith, was guilty of the conſpiracy. It was not neceſſary, under this indictment, as under that lately before the court for treaſon, that two witneſſes ſhould ſubſtantiate any one fact, one would do; nor was it neceſſary that any writing or agreement ſhould be drawn between the parties to create it a conſpiracy: a meeting was held, the object of which was but too well authenticated by previous conduct.

The ſecond count concerned the reſcue of the priſoners. It had been ſtated that actual force muſt be uſed to make it a reſcue: the learned judge ſaid, that if the object was obtained by intimidation, and the priſoners were ſurrendered, it did not differ from force in the

leaſt, in a legal view: for if an highway-man was to put a piſtol to the breaſt of another, and demand his money, as had been ſtated by Judge Peters, in the caſe, 2 Hawk 37, and the money was delivered, it was a robbery, though the piſtol had not been fired. The queſtion was, were not the threatenings held out to the marſhal the immediate cauſe of his ſurrendering the priſoners, in order to prevent lives being loſt? With regard to the arreſt, no doubt could be entertained that the Lehi priſoners, as well as Ireman and Fox, were compleatly in the marſhal's cuſtody. There are only two kinds of eſcape, one is voluntary, and the other is negligent: the former is where the officer is agreeable to the eſcape, the latter, as in the caſe before the jury, is, the officer not having power to keep them, ſuffers them to go at large.

The third count reſpects obſtruction of proceſs. The judge ſaid he did not think it right to convict either of the defendants of the whole three counts, becauſe the reſcue neceſſarily implied obſtructions of proceſs, no man could be guilty of a reſcue without obſtruction of proceſs, and therefore the counts reſolved themſelves into two; if it was the opinion of the jury that either of them were guilty of the whole, the verdict need only be given on the two firſt, to wit: conſpiracy and obſtruction of proceſs. As to the conſpiracy, it cannot be poſſibly doubted but there was one.

The judge then took up the individual conduct of the ſeveral defendants, after the following order:—*First.*

DANIEL SCHWARTZ, Sen.

By the evidence of the marſhal and of William Barnet, he was ſeen at Bethlehem, but he behaved civily, and was come there to know what they were doing. Chriſtian Ruth ſaw him there. Judge Henry depoſes, that he appeared to pride himſelf in his two fine boys who were there. Mr. Eyerly did not know that he was active there, but he appeared quite jovial: he ſaid he had two ſons there; that he requeſted Toon to go there, and adviſed him to take his trumpet to look well. It was given in evidence, when told of his ſon pulling Mr. Balliott's cockade from his hat, that if he had ſeen his ſon do it, he would have whipped him, and he appeared to be ſorry ſo much inſult was given to the marſhal at Millar's town. Mr. Schymer ſays he was at the meeting at his houſe, but cannot ſay he miſbehaved.

DANIEL SCHWARTZ, Jun.

The marſhal thinks he ſaw him at Millar's town, where he ſeemed to be a pretty active and buſy young man. Toon ſaw him at Bethlehem, but without uniform, and cannot ſay he miſbehaved, or interfered. Mr. Eyerly ſaw him at Millar's town behaving very abuſive, and threatening to beat them, and he thinks it was him who tore the cockade from Mr. Bailliott's hat.

HENRY SHIFFERT,

The marſhal, ſaw at Bethlehem, and he believes he was armed. Toon ſaw him there, and with a ſword, which he drew. Fogle ſaw him at Millar's town, when he ſaid, that if they would not take bail for Shankweiler, they would not let him go to Philadelphia.

HENRY STAHLER,

The marſhal alſo thinks he ſaw at Bethlehem. Andrew Shiffert ſaw him, both there and on the road, in uniform. Moretz ſaw him on the road, and he ſaid he was going to ſee what was become of thoſe priſoners. He was in uniform, with a ſword. Toon ſays that Stahler ſaid he would not interfere in the reſcue.

CHRISTIAN RUTH

Was ſeen at Bethlehem by Toon, in uniform, with a ſword. Andrew Shiffert ſaw him there and on the road. Some perſons in his preſence ſaid, that they would take the priſoners from the marſhal.

GEORGE SHAEFFER

Was ſeen at Bethlehem by Shiffert, but without arms or uniform. William Barnet ſaw him there; he ſaid he was come there only to ſee ſome of his neighbors going to Philadelphia; he ſaid if the marſhal wanted to take him, he would give himſelf up: he did not appear to be one of the rioters. Judge Henry ſaw him at Bethlehem; he did not appear to be violent, or uſe any offenſive language; he ſaw him much out of doors with the company, but not active. John Moretz ſaw him at the meeting at Schymer's, where he talked very loud, as though he wiſhed to prevent Mr. Eyerly reading the law; and on ſome of them doubting whether it was a law or not, he ſaid, even if it was, they would not ſubmit to it. Mr. Eyerly and Mr. Schymer depoſed the ſame, and that, he added "here I am, take me to gaol, but you ſhall ſee how far you will bring me;" on which a number adds, "Yes, let them but take one to gaol, we will ſoon have him out again." Mr. Heckawelter ſays, that he told him he had abuſed his father ſomething about a liberty pole, and that he was come to give him a licking for it, for which he followed him. Mr. Sterner ſays, he told him to tell Judge Henry about the man with ſword and piſtol, who would oppoſe the aſſeſſors. Mr. Reiſch depoſed, that the defendant ſaid he was a damned ſtampler, if he ſuffered his houſe to be meaſured; he would not: that if the aſſeſſor came into his townſhip, he would not come out again alive; and if they were to take him to priſon, there would be fifty men to take him out again. Mr. Schymer ſaid, that the defendant was very much againſt chooſing aſſeſſors, and was pretty violent; that he abuſed Mr. Heckawelter about the liberty pole.

The judge ſaid, he ſhould forbear ſpeaking particularly as to the nature of the combination or conſpiracy; but, if it was not predetermined, after meeting together there, the very act of meeting became a conſpiracy; if the defendants came there after it began, not having a previous knowledge of it, it was their duty to have withdrawn themſelves; but if they did engage themſelves voluntarily and knowingly, though they knew nothing of it before, it was deemed in law equally as much a combination as though they had predetermined it.

The jury withdrew, and next morning returned with the following verdict:

CHRISTIAN RUTH, HENRY STAHLER, and HENRY SHIFFERT, GUILTY, as to the reſcue.

DANIEL SCHWARTZ, ſen. GUILTY of the conſpiracy, in adviſing an unlawful combination.

GEORGE SHAEFFER, GUILTY of the conſpiracy, in adviſing, and GUILTY as to the reſcue.

DANIEL SCHWARTZ, jun. NOT GUILTY.

The priſoners being ſeverally called to the bar, Judge Iredell addreſſed them to the following effect:

"*George Shaeffer, Henry Stahler, Henry Shiffert, Chriſtian Ruth, and Daniel Schwartz,*

"THOUGH the crimes of which you have been convicted, in ſome "reſpects, are different in their nature, yet they all have reference to one common object, that of defeating, by force of arms, the execution of an act of the Congreſs of the United States.—You and your confederates ſucceeded ſo far, as totally to prevent, in one mode or other, the execution of that act, in a very important part of this ſtate. The act thus daringly oppoſed, which was for the collection of a tax on lands and houſes, was framed with particular anxiety for the relief of the poorer part of the community, and the burthen of it muſt fall principally on the rich. The ignorance of it which was affected, was without the leaſt color of excuſe, becauſe information was offered, which was repeatedly rejected, and in ſome inſtances with tumult and diſdain. Neither could you fairly alledge any ground for diſcontent, on account either of the character or conduct of the officers concerned, becauſe the former appears to have been perfectly unexceptionable, and the latter in general meritorious in the higheſt degree, as they united with that firmneſs which their duty required, every endeavor conſiſtent with it, to give all the information in their power, and to execute the law in the manner moſt convenient for the people. By your ill conduct, however, and that of your aſſociates, a conſiderable part of the three counties was inflamed into a ſtate of inſurrection; the

law in queſtion loſt all its efficacy: officers were inſulted—and at length that daring and infamous outrage was perpetrated at Bethlehem where a body of the militia itſelf marched in military array, and by force reſcued a number of priſoners from the cuſtody of the marſhal, whoſe conduct on that occaſion for courage, diſcretion, and propriety in every reſpect, is above all praiſe. In conſequence of ſuch defiances of the conſtitution and laws of your country, and the numbers and ſtrength by which they were ſupported, it became the indiſpenſible duty of the government to exert the powers with which it was inveſted to ſuppreſs this combination, and bring the principal perpetrators of it to a trial for the offences they had committed. The civil magiſtrates having loſt all their authority, (notwithſtanding ſome of them exerted themſelves in an extraordinary manner, which deſerves the laſting eſteem and gratitude of their country) a melancholy neceſſity aroſe for employing a military force, which chiefly conſiſted in volunteer corps, who had nobly embodied themſelves to defend the conſtitution, and laws of the United States, whenever any occaſion ſhould ariſe, though undoubtedly hoping that their ſervices would be required, rather againſt the foreign enemies of their country, than any within the boſom of it. The ſervices of theſe gentlemen have been attended with great benefit to their country, and great honor to themſelves; but there is too much reaſon to fear they muſt have ſuſtained much perſonal inconvenience, for which, as well as for other private injuries, and a great additional expence and inconvenience to the public, the authors of thoſe outrages are alone accountable. You have each of you undergone a fair and impartial trial, and have been convicted of one or more offences charged againſt you, for which it is now the duty of the court to pronounce the ſentence of the law upon you. The diſcretion which the law has confided to us, we have endeavored to execute to the beſt of our judgment, conſidering on the one hand the neceſſity of making proper examples to deter others from the commiſſion of the like offences, which it ſeems to have been ſuppoſed would always paſs with impunity, and on the other hand paying a due regard to the various circumſtances which appear to have diſcriminated the conduct of each of you."

The ſentences were as follow:

That George Schaeffer, convicted upon two counts of the indictment, viz. conſpiracy and obſtruction of proceſs, pay a fine of 400 dollars, and be impriſoned for eight months, for the firſt offence; for the ſecond that he pay a fine of 200 dollars, and be impriſoned four months, after the expiration of the firſt term: and at the concluſion of the twelve months impriſonment, that he give ſecurity for his good behavior for two years, from the expiration of the period of his impriſonment, himſelf in the ſum of 1000 dollars, and two ſureties in the ſum of 500 dollars each.

That Daniel Schwartz, ſenior, convicted of conſpiracy, pay a fine of 400 dollars, be impriſoned for eight months, and give ſecurity at the cloſe of that period for his good behavior for one year, himſelf in 1000 dollars, and two ſureties in 500 dollars each.

That Chriſtian Ruth, convicted of aiding in the reſcue, pay a fine of 200 dollars, be impriſoned for eight months, and give ſecurity for his good behavior for a year, himſelf in 1000 dollars, and two ſureties in 500 dollars each.

That Henry Stahler, convicted of aiding in the reſcue, pay a fine of 200 dollars, be impriſoned for eight months, and give a like ſecurity with Schwartz and Ruth for his good behavior.

That Henry Schiffert, convicted alſo of aiding in the reſcue, pay a fine of 50 dollars, be impriſoned eight months, and give ſecurity for good behavior for twelve months, himſelf in 500 dollars, and two ſureties in 250 dollars each.

The priſoners each to pay the coſts attending the proſecution before they are diſcharged from priſon, and ſtand committed until the ſentences be complied with.

The court, taking into conſideration the circumſtances of the parties, proportioned the penalties accordingly.

An abſtract of the trial of JACOB EYERMAN, on an indictment for breaking priſon, conſpiracy to oppoſe the law for laying a direct tax, and a tax on houſes, and for counſelling and adviſing an unlawful combination and conſpiracy—

Before the Honorable BUSHROD WASHINGTON and RICHARD PETERS, eſquires, in the circuit court of the United States, held at Norriſtown, in the county of Montgomery, and ſtate of Pennſylvania.

WEDNESDAY, *October* 16, 1799.

The priſoner being arraigned, pleaded *Not Guilty*.

After the jury were ſworn, Mr. *Rawle*, attorney for the diſtrict, opened the proſecution by ſtating to the jury the ſum of the indictment to be divided into three ſeparate and diſtinct charges, proceeding from the ſame tranſaction, and partaking of the ſame guilt:

Firſt, he ſaid he ſhould prove that there was or warrant iſſued by the judge of the diſtrict to take the perſon of the priſoner into the cuſtody of the marſhal, which was effected, but that he did break priſon and go at large, until by another warrant he was afterwards taken in the ſtate of New-York.

Secondly, He ſhould prove that the priſoner was engaged in a conſpiracy, to oppoſe the operation of two laws of the United States, by intimidating the aſſeſſors while in the diſcharge of their official duty.

Thirdly, That the priſoner did counſel and adviſe an unlawful combination and conſpiracy to prevent thoſe laws being carried into effect.

It was only three years and a half ſince he came into this country, —and though he had aſſumed the reſpectable character of a miniſter of the goſpel ; though in that capacity he was bound to preach up ſubmiſſion to the laws of the country, yet, in that ſhort time, he had

recommended, both by his advice and example, an oppoſition to thoſe laws by which the whole community were bound.

Mr. Rawle then related ſome circumſtances that occurred at Bethlehem, to which place the defendant was brought priſoner, and in the cuſtody of the marſhal, but availing himſelf of the opportunity there given to the priſoners to eſcape, inſtead of again delivering himſelf up, he immediately fled, left the country, and ſequeſtrated himſelf in a remote part of the ſtate of New-York, where he was diſcovered, and again taken into cuſtody. This, he ſaid, was puniſhable at common law, independent of the ſedition law lately paſſed, which only went to explain the common law, and in many caſes to *ameliorate its rigor*.

Col. NICHOLS the Marſhal,

Depoſed, that he received a warrant, by virtue of which the priſoner was arreſted, and brought into his cuſtody at Bethlehem, and that he was reſcued, together with the other priſoners, by an armed force on the 7th of March laſt. The witneſs then related the tranſactions attending his journey to, and at Millar's town, and at Bethlehem previous to the reſcue. * After the priſoners were reſcued, John Fries expreſſed a great ſolicitude for the ſafety of Eyerman by returning, not having ſeen him among the others, and aſking me where was the *minister?* I told him that he was out of the houſe; he ſaid he was not, however he went out again, and there ſeeing him, appeared perfectly ſatisfied. After this man was liberated, captain Jarret ſaid he could now march off his men. Upon the whole it ſeemed that Eyerman's deliverance was a particular object with thoſe people. He promiſed when in the room that if he was reſcued he would meet me the day following at Philadelphia to deliver himſelf up, but he did not, and I never knew what become of him till he was brought back by the deputy marſhal of New-York.

JACOB EYERLY,

Commiſſioner for the diſtrict, related the appointment of the aſſeſſors in the different townſhips, and depoſed, That the priſoner, at a meeting held in Hamilton townſhip, told the people that Congreſs had no right to paſs ſuch a law, and if the aſſeſſors were to come to his houſe he would tell them ſo, and not let them proceed to take his rates.

Mr. Eyerly and Judge HENRY both, informed the court of the general diſtracted ſtate of that part of the country, notwithſtanding their endeavors to quiet the minds of the people by explanation and advice ſo that the magiſtracy could not execute their duty with ſafety; nor could the evidences called againſt thoſe who had oppoſed the aſſeſſors, be prevailed upon, without great difficulty, to give their teſtimony, through a dread of the rage of the people.

* *See the first trial of Fries.*

JOHN SERFASS, ESQ.

Depoſed, That he reſided in Cheſnut hill townſhip, Northampton county: that he was appointed an aſſeſſor under the law for laying a direct tax: ſo ſoon as the people heard that he was appointed, they were much uproared againſt it. The people were to aſſemble to conſider the law, and I reſolved to go to tell the people they were doing wrong; accordingly I went, and there were 40 or 50 people aſſembled; but they were not in a military dreſs. This was ſometime in December. After I was there a ſhort time, Jacob Eyerman, the priſoner, came in, he began to rip out in a violent manner againſt this taxation, ſaying, that Congreſs had made laws which were unjuſt, and the people need not take up with them, if they did all kinds of laws would follow, but if they would not put up with this, they need not with thoſe that would come after, becauſe it was a free country; but in caſe the people admitted of thoſe laws, they certainly would be put under great burdens. He ſaid he knew perfectly well what laws were made, and that the Preſident nor Congreſs had no right to make them. The people in general thought that the *minister* was right, but I told them that he was leading them wrong. I aſked them whether they had heard or ſeen the laws? They ſaid no. I then told them the words, as near as I could recollect, but I found very little heed taken of it. Mr. Eyerman ſaid, that the people ſhould not let the aſſeſſors take down their taxation, and that they might abuſe them ever ſo much, there was no law could hurt them for doing it.

I ſhortly afterwards gave notice to the people to meet at the ſame houſe, in order to explain the law to them. Accordingly they met, and I explained the law to them, and when I left them, they appeared very peaceable.

The ſecond day of Chriſtmas this man preached at a private houſe; as ſoon as ſermon was done, he went to the houſe of Conrad Crazy, but he no ſooner came in, than he began to run out againſt the taxation very much. There were about fifteen or ſixteen people preſent. He repeated then that he knew the laws very well, and that Congreſs and the government only made ſuch laws to rob the people, and that they were nothing but a parcel of damned rogues, and *spitz bube*, * but that they (the people) had no right to ſubmit to it. I told him that I had told him before to quit doing that, that it was not his duty; that his duty was to preach his ſermon, and to quiet the people, or decide between them: if he went on that way I ſhould bring him to ſuch damage as he would not like. With that he did quit.

Attorney. Did he, at that, or any other time, adviſe you not to be an aſſeſſor?

Witness. Yes. He told me often that it was better for me not to take up with that commiſſion, perhaps it might injure me, for I might meet with ſome evil.

Were the people of your townſhip much oppoſed to the law?

Yes, they were ſo violent that I knew but one man that was the ſame ſide as myſelf.

* *Highwaymen or thieves.*

Did you think that ſuch proceedings would have taken place, or, if they had, that it would have ariſen to ſuch an height, if it had not been for the parſon.

I am fully convinced it would not. I knew of no other perſon there who went about to adviſe the people to oppoſition. He ſaid he had a book of the laws, and either that there was no ſuch law in it, or elſe that the conſtitution forbade ſuch laws.

COURT. Did Eyerman appear to be a ſimple ſort of a man, eaſily to be led aſtray, or deluded?

WITNESS. No, he was not thought ſo, he was always thought a very good preacher.

PRISONER to the WITNESS. Did I not tell you at Crazy's houſe that I did not think any the worſe of you for being an aſſeſſor, becauſe you were ſworn to ſupport the government, and had a right to ſpeak for it?

WITNESS. At that houſe, when I ſpoke againſt his conduct, he ſaid "aye, Mr. Serfas is right, he is ſworn to ſupport the government."

PRISONER. Did I not pray for the government, Preſident and Vice-Preſident?

WITNESS. Yes, you did when in the pulpit, but when you were out you prayed the other way.

JOHN SNEIDER,

Depoſed that he lived in Hamilton townſhip, and knew the priſoner, who told the deponent that a body ſhould lay out againſt that houſe tax. As much as he underſtood, the priſoner meant, to take arms againſt it.—He ſaid that if we let that go forward, it would go on as in the old country, but that he (the priſoner) would rather lay his black coat on a nail, and fight the whole week, and preach for them Sundays, than it ſhould be ſo.

ATTORNEY. How long has this man been at Hamilton?

WITNESS. About eighteen months.

The townſhip was always peaceable I ſuppoſe before he came amongſt you?

Yes, and I believe if he had not come, nothing would have happened of the kind.

SIMON HALLER,

Depoſed that he reſided in Hamilton townſhip, and knew the priſoner, who was very well liked as a preacher until lately. That the priſoner appeared to be in oppoſition to the houſe tax law, but who was the leader of it he knew not. That the priſoner came to the deponent's houſe, where converſation began about the houſe tax, whereupon he ſaid he did not care whether they put up with it or not, for he had no houſe to tax. A perſon preſent anſwered but you have a great quantity of books to tax. The priſoner anſwered that "if any body would offer to tax his books he would take a French, a Latin,

an Hebrew, and a Greek book down to them, and if they could not read them, he would ſlap them about their ears till they would fall to pieces." The deponent ſaw the priſoner at Hartman's when he talked much againſt the tax, but could not recollect what. The occaſion of the people coming together then, was, that there was preaching that day. The priſoner continued preacher to that congregation till he was taken up.

JUDGE PETERS,

Depoſed that he iſſued a warrant to apprehend the priſoner, but he never ſaw him until brought from New-York. He alſo repreſented the general ſtate of the country to be ſuch that, knowing the county magiſtrates could not execute their duty, he was obliged to iſſue his warrants as judge of the diſtrict.

The evidence here cloſed, but the priſoner, his pecuniary circumſtances not enabling him to employ any counſel, refuſed to make any defence, but juſt obſerved that if he had been guilty of any thing, it was contrary to his knowledge, and he hoped, if the jury ſhould find him guilty, that they, and the court would take his caſe into conſideration, and puniſh him as ſlight as poſſible, and he would endeavor in the future courſe of his life to do better.

Mr. Rawle in a ſhort addreſs to the jury quoted 2 Hawkins page 243. to ſhow that the priſoner was in lawful cuſtody, and page 245. what was the force which in law made breach of priſon. page 249 ſtated that whoever broke from lawful confinement was guilty of miſpriſon, which was puniſhable by fine and impriſonment.

The act commonly called the ſedition act, he ſaid, ſpoke of the ſecond and third counts in the indictment. (Conſpiracy, and counſelling a conſpiracy.) Reſpecting the crime of conſpiracy he quoted 2 Hawkins page 119. which refers to Blackſtone page 392.

He juſt referred the jury to the teſtimony, to prove what part the the priſoner had taken in either, or all the crimes alledged.

Judge Washington delivered a charge to the following effect:

Gentlemen of the Jury,

IT cannot be neceſſary that the court ſhould detain you long in the charge on the preſent occaſion. The crimes with which the priſoner before you is charged are, firſt, a combination with others, for the purpoſe of oppoſing the government: ſecondly, adviſing and exciting others to this oppoſition; and thirdly, in reſcuing himſelf from the hands of the marſhal, in whoſe lawful cuſtody he was.

Oppoſition to government ſeldom breaks out into overt acts, unleſs ſome previous combinations have been made by perſons who think themſelves ſtrong enough to do it with effect; and this ſeldom happens, until ſome perſon or perſons, more knowing, and more wicked than the general maſs of ſociety, endeavors to adviſe and miſlead the ignorant and unwary, or leſs deſigning. Thus to form a powerful combination, there muſt be a regular chain for that preciſe purpoſe.

The offence or offences with which the priſoner is charged is inferior to overt acts, and the puniſhment is leſs. The only queſtion for you to determine is whether, upon evidence, the priſoner has been guilty of all or either, of the offences laid to his charge. It would be tedious and, I think, unneceſſary for me to go through the teſtimony, becauſe it muſt be freſh in your minds. Reſpecting a combination to oppoſe an act of Congreſs, the general circumſtances for your inquiry are ſuch as will ſatisfy you of the exiſtance of ſuch a combination. This, I think, is proved by the frequent meetings of the people in the different townſhips of the counties of Northampton, Bucks, and Montgomery, the declarations of the people when convened, and the threats ſo frequently thrown out by them againſt the government, and the officers of government. Attempts were frequently made, not only by the priſoner, but by others to diſunite the people, and to deter the public officers from executing the duty repoſed in them, and which they were ſworn to perform, by pointing out to them the dangers to which they were expoſed, ſhould they carry thoſe laws into execution. Unleſs you diſcredit the teſtimony which has been laid before you, and that there is no cauſe for doing, it appears to the court that the proof is as clear againſt him as any thing can poſſibly be.

That he was the prime cauſe and adviſer of this oppoſition appears to be proved by many witneſſes, the reſpectability of whom has not been pretended to be doubted.

Reſpecting the reſcue, the attorney of the diſtrict has preciſely laid down the law to you. It does not follow, becauſe a man eſcapes from priſon, or from the cuſtody of an officer, (which is the ſame in law) that therefore he is an offender within the law for which he was committed: nor does it follow that he did not break priſon, becauſe the act of force was executed by others who were in combination with him, and he in conſequence thereof made his eſcape. He conſented, and ſhowed that conſent, by his eſcape, for whether the force was uſed by himſelf or others, is immaterial.

From all the teſtimony, it appears that the priſoner, in his previous conduct, took pains to ſtir up the diſcontents, and that the armed force came to Bethlehem to reſcue him, by their earneſtneſs to ſet this man, particularly, at liberty. Farther, his ſubſequent conduct proves his offence, for if he had not been liberated by his own conſent, he would have done as the others did, who left the cuſtody of the marſhal at the ſame time: he would have given himſelf up afterwards; but on the contrary, he fled from his country, and ſecreted himſelf, until taken by a new warrant in another diſtrict.

Gentlemen, it is your buſineſs to bring theſe facts into one view, and decide whether the priſoner is guilty of one, two, or all of the counts in the indictment: as you think, ſo you are bound to find.

In about 15 minutes the jury returned with a verdict "GUILTY of all "the three counts."

Several other perſons (upwards of twenty) were arraigned for miſdemeanors, and ſubmitted to the court, reſpecting whoſe conduct ſome evidences were heard.

No ſentences were paſſed at this ſeſſion, becauſe, on account of ſome irregularities in the form of convening the court, it was obliged to adjourn, and the whole of its proceedings were rendered invalid.

Eyerman, at the next term ſubmitted himſelf to the court, when he was ſentenced to be impriſoned one year, to pay a fine of fifty dollars, and then to give ſecurity for his good behavior one year, himſelf in 1000 dollars, and two ſureties in 500 dollars each.

FRIDAY, *May* 2.

The following perſons, who ſubmitted themſelves to the diſcretion of the court, and reſpecting whoſe crimes and circumſtances ſome examination took place, received the ſentences ſeverally annexed to their names, for conſpiracy, reſcue and unlawful aſſembly.

Henry Jarret 1000 dollars, 2 years impriſonment. Conrad Marks 800 dollars, 2 years impriſonment. Valentine Kuder 200 dollars, 2 years impriſonment. Jacob Eyerman 50 dollars, 1 year impriſonment. Henry Shankweiler 150 dollars, 1 year impriſonment. Michael Smyer 400 dollars, 9 months impriſonment. Henry Smith 200 dolls. 8 months impriſonment. Philip Deſch 150 dollars, 8 months impriſonment. Jacob Kline 150 dollars, 8 months impriſonment. Harman Hartman 150 dollars, 6 months and 1 day impriſonment. Philip Ruth 200 dollars, 6 months impriſonment. John Everhart 100 dolls. 6 months impriſonment. John Huber 150 dollars, 6 months impriſonment. Chriſt. Sox 200 dollars, 6 months impriſonment. John Klein, jun. 100 dollars, 6 months impriſonment. Daniel Klein, Jacob Klein, Adam Briech, G. Memberger, 150 dollars each, 6 months impriſonment. George Gettman, William Gettman, 100 dollars each, 6 months impriſonment. Abraham Shantz, H. Memberger, Peter Hager, 100 dollars each, 4 months impriſonment. Abraham Samſel, P. Huntſberger, 50 dollars each, 3 months impriſonment. Peter Gable, Daniel Gable, Jacob Gable, 40 dollars each, 2 months impriſonment.

Each of the above perſons were required to enter into recognizance for their good behavior.

APPENDIX.

No. I.

TRIAL OF JOHN FRIES FOR TREASON.

Motion of Mr. Lewis for removing the Trial.

April 30.

Mr. Lewis *preferred the following motion to the Court in writing.*

AND now the priſoner, John Fries, being placed at the bar of this Court, at the city of Philadelphia, being the place appointed by law for holding the ſtated ſeſſions thereof, and it being demanded of him if he is ready for his Trial for the Treaſon in the Indictment mentioned, he moves, *ore tinus*, that his trial for the ſame offence may not be proceeded on here, and that the ſame may be had in the county in which the ſame acts of treaſon in the ſaid indictment mentioned are laid, and where the offence therein mentioned is alleged to have been committed.

He ſtated this motion to be founded on an act of Congreſs entitled the judiciary act, paſſed 24th September, 1789. Sect. 29, "That in caſes puniſhable with death, the trial ſhall be had in the county where the offence was committed, or where that cannot be done without great inconvenience, twelve petit jurors at leaſt ſhall be ſummoned from thence." He ſtated the advantages reſulting from this ſection to the accuſed to be, that a man might be tried by his peers, where he is known, and where there can be no difficulties to procure witneſſes in his behalf. This ineſtimable right, he ſaid, was one of the grounds of complaint to the United States, which promoted their ſeparation from the mother country, and this was one cauſe of her taking up arms. This advantage, Congreſs had held in juſt eſtimation, and upon this, no innovation was to be admitted, on which account the moſt pointed and poſitive terms were uſed, and the diviſions of vicinage reduced to counties. But nevertheleſs, he obſerved, this rule had an exception, which was where "manifeſt inconvenience" occurred, twelve jurymen were to be ſummoned from that county, and therefore before the court could conſider themſelves authorized to proceed to the trial in that place, their honors muſt be well ſatisfied that trial could not take place in the county of Northampton without "manifeſt inconvenience." Theſe words did not refer to the inconvenience the judges might feel in tri-

veiling, or the time ſpent, but an inconvenience ariſing from ſome cauſe which Congreſs did not foreſee at the time of the paſſing of the act. The trouble and inconvenience to the judges could be no greater than to the priſoners, whom the government had brought to this city.

Mr. Lewis ſaid he was aware of an objection which would be raiſed to the force of the ſection above quoted, founded on a ſubſequent law paſſed March 2d, 1793. ſect. 3. which directs that a judge of the ſupreme court, with a diſtrict judge, "may direct ſpecial ſeſſions of the circuit courts to be holden for the trial of criminal cauſes, at any convenient place within the diſtrict, nearer to the place where offences may be ſaid to be committed, than the place or places appointed by by law for the ordinary ſeſſions." The places appointed by law for the ſtate of Pennſylvania are, York town and Philadelphia. This he preſumed muſt refer to cauſes of a civil nature, or to criminal acts of a leſs grade than what is peremptorily required in the act firſt quoted from, to govern "caſes puniſhable with death." The ſame act ſays, that trials in capital caſes ſhould be elſewhere, and not at the ſtated places, unleſs manifeſt inconvenience attend it. And what, he aſked, was the great inconvenience in the preſent caſe? Was there any objection of a nature to render it improper or impoſſible to try the priſoner in that county? It was true that a conſiderable number of perſons in that county had been miſguided, but was it to be inferred thence that all were? Or that a fair trial could not be had there? No doubt an able and impartial jury might be obtained in that place, and therefore an impartial trial could be had. In bad times, with corrupt judges, if ever ſuch a time, and ſuch judges ſhould unhappily be in this country, the ſection of 1789 would form a protection to the citizen againſt any innovation of his privilege, and prevent them dragging him from his family and friends to a diſtant part, where he might be unknown, to be tried.

Surely it could not be urged that the ſafety of the United States, or the protection of the court, made it neceſſary to try this cauſe in Philadelphia. The priſoners might have been confined in the gaols of that county; the troops of the United States were even now remaining there, to protect the law.

The vicinity of that ſpot to the witneſſes who beheld the tranſactions was an additional argument for the plea. Some to be ſure had come to the city, others perhaps might come forward, ſickneſs or age might operate to prevent ſome coming. It was alſo inconvenient to the priſoner in preventing his neighbours or relatives affording him that comfort which they might wiſh. But all this, he ſaid, was immaterial, the law was definite, and nothing could ſupercede its mandate. Here was a liſt of ninety-eight witneſſes, furniſhed the priſoner by Mr. Attorney, who were to appear againſt him, and hence the neceſſity of time and opportunity being allowed the priſoner to examine that numerous train of evidence, and to prepare to controvert them.

Mr. Lewis then referred to a ſimilar motion which he made before the court, reſpecting a perſon tried for high treaſon in the Weſtern Inſurrection, in 1795, for which he referred to Dallas's reports, page 18, vol. 3. The motion was then rejected, but upon different grounds

than could poſſibly be now urged. Judge Wilſon ſtated it as the opinion of the court, the plea being made at a previous court, that the circuit court, at which the priſoner was to be tried was ſo near, that there was not time to ſend to the witneſſes and bail, on account of the great diſtance of the county, from the city, as they were ſubpœned to attend at the next ſeſſion. The reaſon was, that the Supreme court could not order a ſpecial ſeſſion to over-rule the ſtated ſeſſion, and therefore the inconvenience was *great* and *manifeſt* ; but no ſuch excuſe could hold good in the preſent caſe : the mandatory language of the former clauſe muſt be obeyed.

Further, he obſerved, that a man might be charged with the crime of treaſon, and committed for that crime, or bound over, if the caſe would allow it, yet it was impoſſible to know that he would be indicted for treaſon by a grand jury, and no court held previous to the indictment, could ſay whether it was a caſe puniſhable with death, or a miſdemeanor, and therefore the time to move the plea was the preſent time, after the indictment was returned, and when the defendant was arraigned for trial, and till then the motion would be inapplicable. He obſerved that he conſidered this motion of conſiderable importance to the priſoner, and not to him only, but to every citizen of the United States : this was the ſecurity of his rights, and thoſe of every man in the court, and therefore he hoped the juſtice of the court would grant the plea.

Mr. Sitgreaves ſaid he had not been able to diſtinguiſh whether this motion had been preferred to the court as a matter of unqualified right, or whether it was merely an application, as a matter of favour in this particular inſtance, but he would attempt an anſwer to both. With reſpect to the 29th ſect. of the judiciary act, if the firſt part of the paragraph was to ſtand alone, without a qualification, it would be a poſitive direction, and would not bear an objection, yet there would be a difficulty ariſe how it could be executed : But it was not ſo. At the time that law was paſſed, there were ſtated places, as well as ſtated times for holding the federal courts, there was no proviſion whatever for holding them elſewhere than the appointed place, although the judges had ſpecial powers to alter the time of holding them : whether that reaſon, or ſome other, excited the legiſlature to put the diſcretion as to place in the judges alſo, he could not tell, but although the firſt direction is poſitive, an alternative is immediately introduced : twelve jurors ſummoned from the county where the crime was committed may ſuffice, at the diſcretion of the court, and this ſecond branch of the rule is to avoid what the court may judge a great inconvenience, againſt which no general rule of common law can provide.

In order to prevent any miſ-interpretation, and remove the embarraſſments, which a wrong uſe of the law of 1789 might produce, the proviſion of March 1793 ſtill more defines that diſcretion, without making any material alteration : that ſays " the court might be held at any convenient place within the diſtrict, nearer to the place where the crime was committed than the place for holding the ſtated ſeſſion." Certain it is that this proviſion does not require it to be held in the ſame county ; indeed it is extremely queſtionable, whether the court have au-

thority to remove it there ; they may nearer the place, but the word "nearer" excludes the place itſelf; if the place was intended, the phraſeology would be more accurately inſerted. He would now remark that no place nearer the ſcene of inſurrection than this city could have been ſelected, and here the diſcretion of the court had fixed it. The law muſt have been made for one of two reaſons: either for the facility of public juſtice, or to favour the priſoner. Reſpecting the firſt, the crime was committed, not in one county only, but in three adjoining counties, and therefore agreeable to the arguments of the gentleman, the trial muſt be held in three counties, by three juries, and the witneſſes be harraſſed to appear three times ; but even if the court ſhould determine upon one of thoſe counties for the trial, which was to be ſelected?

Mr. Lewis queſtioned the propriety of this argument, ſince it appeared all the caſes of treaſon except one (in Bucks) happened in Northampton county, and no inconvenience could accrue from holding the trials at one place.

Mr. Rawle ſaid that he ſhould produce evidence to prove the crime of treaſon committed in the three counties.

Mr. Sitgreaves proceeded to ſtate that as the act of 1793 as well as 1798 left a diſcretion for the court to determine according to exiſting circumſtances, and not according to any known definite principles of law, it would be impolitic, if not illegal to hold the court in the county, this city being, agreeable to one argument next to one of the counties, and on the other view, the ſtated place for holding the courts, the arguments muſt fall, and the motion be rejected. Philadelphia, he ſaid was as near to the place where the crime was committed as the court houſe of that county, and here it was probable the purpoſes of public juſtice could be moſt compleatly anſwered.

If then the argument was not ſupported on public convenience, it muſt be the convenience of the priſoner which the gentleman aimed at, but he had failed to ſhow any ſuch thing, and therefore had precluded any anſwer. He had argued for the comfort of the priſoner; having his neighbors about him, &c. but it muſt be obſerved that the reſidence of the priſoner was in Bucks, whereas the crime was committed in Northampton, and there he muſt have been tried, if the deciſion ſhould turn in favor of his arguments. Now, Philadelphia was as much an adjoining county to Bucks, as Northampton, and therefore as much his vicinage, and each place of holding the courts at about equal points of diſtance from his reſidence. Even if it was held in Northampton county, it would neither facilitate the trial, nor be of advantage to the perſon.

Another queſtion he would ſuggeſt was, whether this application was made ſoon enough. It was nearly, or quite a week, ſince the indictment was given to the priſoner, and it was a much longer time ſince he was committed: if it was proper that any application ſhould be made to the court, either as a matter of right or of favour, it ought to have been made in due time, ſo as not to delay or defeat the queſtion of public juſtice. It would be unneceſſary to ſay that the queſtion was fully determined in the year 1795, and if it was a matter of

law, and as such mandatory, every case which was then decided on, was a case of mis-trial, and the whole court and council must have been guilty of a great dereliction. But he believed it was asked of the court at that time, not as a matter of right, but of favour, and it appeared by the report quoted, that if the favour could have been granted, it would, but the decision was against the possibility of it, and certainly stronger reason would have weighed for it then than now, on which account there is now at least, equal grounds for refusing it.

Mr. Rawle observed, that while he professed as much humanity as any gentleman in court, yet as council for the prosecution he felt as much desire for the just execution of public justice. He could scarcely persuade himself that the gentleman who moved the court could be serious at this late period of the business,—after seven days had elapsed since the indictment was found, after all the inconveniencies of a preparation for trial had been incurred this new, this additional inconvenience of summoning the witnesses and jurors to another place, could not be either to the advantage of the prisoner, or agreeable to a just construction of the law adverted to. The law of March 1793 does not apply to a case which the offence first charged would make capital so as to effect life. The question seriously was, Mr. Rawle said, whether granting the motion would not deprive the country of prosecuting the trial at all, or even after had full proof of the guilt of the prisoner it would not prevent the court of the power of passing sentence. The act read by Mr. Sitgreaves gave the Judge the power to hold courts throughout his whole district, 226, Vol. 2, Laws U. S. but the act of 1789, which fixed the place, only gave the court power as to times of holding special sessions 51, Vol. 1. The 29th section of that act was absolutely very ambiguously worded, because the fifth section of the same act had put it out of the power of the court to remove as to place. Whatever, then, was the intention of the Legislature, the courts had not power to effect a change, and when an act failed in explaining the intention, the intention could not be carried into execution, to remedy the inconvenience of the court, being bound in all cases as to place the clause of 1793 p. 226 was passed.

Mr. Rawle contended that a special court was more than an adjourned circuit court: it was a substantive court of itself, held for special purposes, and could not issue *certiorari* for any other court; if therefore, a special court was to be held for this trial, it must begin *de novo*: a new grand jury, and a new petit jury must be called; the witnesses must be summoned anew, which would be a bad precedent, besides a great delay. The impropriety was evident: after a bill had been found the prisoner had seen a list of the Jury and witnesses; after having had time to calculate its chances, at the seventh day of the proceeding, he came forward to remove the trial! If the prisoner had not had time to enquire into the character of the jurors or witnesses, some other reason would have been given, but as nothing of that kind had been attempted, and as the inconveniences of delay and removal were so manifest, he trusted the court would not accede to the motion.

Mr. Dallas declared that it was not the design of the council for the prisoner to try experiments by the present motion; they con-

ceived that he had a *right* to be tried, in the county where the crime was charged: the act of Congress was mandatory unless "manifest inconveniences" should appear. He conceived that distance could not be an inconvenience, because the act contemplated the possibility of crimes being committed in Allegany as well as in Chester county. Nor could time; the importance of a capital trial was not to be so played with; Congress designed that an impartial trial should be had in all cases, without regard to such trivial objections. He was sure the honourable court would not consider their personal inconveniences as meant, and therefore should not mention it. Mr. Dallas wished it to be observed that the crimes were recently committed, and public justice had not been long suspended, and even if the present motion was acceded to, the hand of public justice might shortly give the blow, by appointing an early special session. It was not certain before the court sat, that a bill would be found for high treason, merely because the parties were bound over for high treason; and therefore the prisoner might not be able to meet that charge: again, the time since the bill was found and the party informed, and served with the enormous list of 98 witnesses, has been very short; it was Wednesday last, seven days only, two of which must be left out, Thursday having been the fast day, and Sunday intervening. Many of these witnesses and jurors he had never seen nor heard of, and it was necessary he should have time to enquire who they were; there had been no catches on the part of the prisoners. It would be an easy thing for the court at this time, since all the parties were upon the spot, to bind them over to appear again. In the case read by Mr. Lewis, judge Wilson expressly declared that there was a desire in the court to comply, but the difficulties were insurmountable. With respect to the other cases, the mandatory language of Congress imposed a necessity on the officers of justice, where it was possible. The clashing of courts, he presumed, could not be held up for excuse at this time: he did not know how much time the present circuit might consume, but as the supreme court would not meet untill August, no doubt there could be a period for the business of a special court spared during the recess; but if the period should be filled up, in the August session arrangements might be made to hold one. With respect to the holding of district courts, Mr. Dallas observed, that the law, Vol. 1, p. 49, 50. allowed a discretion as to the place of holding them; page 51, gives discretion, as to the circuit court, to the judges of supreme court with respect to time: these provisions respected all cases alike, within the jurisdiction of those courts, but the subsequent act referred to, made an exception with regard to cases of a nature highly criminal, or capital: certainly then, if ever the Congress meant there should be a trial at all in the proper county, one like the present must come under that intention. The language of the two acts, page 67, Vol. 1, and 226, Vol. 2, Mr. Dallas observed was different. He first declared, that cases punishable with death should be tried in the county, &c. The second, that special circuit courts may be holden nearer the place where the offences may be said to be committed than the place of the ordinary sessions; but one thing was worthy of notice: the first relates only to offences *punishable with death*, while the other is worded as *crimes* only; of

whatever nature. Cafes of inſurrection and rebellion muſt have been in the view of the Legiſlature, and in them it would be very probable part of more than one county would combine, and they could have excepted ſuch cafes if it had been meant ſo to do. It was farther ſaid that part of the crimes were committed in two counties, and therefore the priſoner had deprived himſelf of the common law vicinage. This was not clear: the vicinage where the offence was committed would at any rate have it in their power to declare what they had ſeen of the conduct of the priſoner. As to the ſtage at which the application was made, no loſs of time had been made, and if it was, it would be extremely ſevere, if in the power of the court to order it otherwiſe, that the priſoner in ſo important a caſe ſhould be injured thereby. On the whole, he truſted, without manifeſt inconvenience ſhould appear, that the court would grant the motion.

Mr. Lewis ſaid it was ſtrange, miſchievous and unfounded doctrine that this application had not been made in time: three clear days from the notice of the indictment being allowed by law to the priſoner, he was not bound to anſwer the indictment until yeſterday: the trial did not then proceed, and he appeared this day, but in his ſincere opinion, from mature reflection, two three nor four days ſhould have weight with the court, becauſe the act of Congreſs was binding upon them, whatever the learned gentlemen had advanced to the contrary: he had a right to demand it, and if their honors, the judges, proceeded to hold the trial in any but the right place, they, and not the priſoner, would offend. Mr. Attorney had ſuppoſed if this was granted, all which had been done would be null and viod, grant this for a moment, did Mr. Attorney or John Fries direct the proceedings of the grand jury, &c. certainly the attorney. In this Mr. Lewis believed he had done ſtrictly right, here was the proper place for the iſſue to be joined; but Northampton is the proper place for the trial of that iſſue. It was objected becauſe it was ſaid the crime was committed in three counties; but ſuppoſe it were in three or thirty counties, the overt act in the bill is laid in one county only, and there only does the law ſupport the claim for trial. The two laws referred to are unneceſſary in capital caſes, if they do extend to them at all, becauſe the firſt law makes ample proviſion not only as to time, p. 51, but as to place, p. 67. and is not ſuperceded by the other. With reference, to the law, of 1793, page 227, which ſays, that criminal cauſes may be tried nearer to the place where the offences were ſaid to be committed, the argument was taken up by Mr. Sitgreaves to mean *nearer to the county*; hence he ſays that Philadelphia county is the adjoining one of the inſurgent counties. In the Indictment Bethlehem is mentioned as the *place*; now the law directs a ſpecial ſeſſion to be held nearer to Bethlehem than is Philadelphia, that act does not ſay whether it ſhall be held in or out of the county, but near the place. The gentleman appeared to have thought he was in another place, and not at the bar, in his view of the diſcretionary power of the court, which would leave it to be regulated according to the ebbs and flows of the paſſions of the judges, or the temper of the times; but he ſhould recollect this diſcretion was of a legal, and not of a political nature, which the neceſſity of the caſe called for. All that

must be considered to operate on the question is, whether justice cannot be done between the United States and the prisoner, if the trial is held in the county of Northampton; if it can, we rise to claim this as the *right* of John Fries, and nearly allied to the interests of every citizen.

Judge Iredell said it was held by judge Hale, that an indictment was part of the trial; if so, he should be glad to be told what they were to do with the present indictment, if the trial was to be removed? if so, the prisoner must be indicted as well as tried in the county. Foster 235, and 236. Another question would be, could the court order the dismissal of the indictment?

Judge Peters could not see how part of the proceedings of this court could be transferred to a special court, and therefore how it could be removed to the county, and while a doubt remained, it would never do to renovate a criminal case of so much importance, he could not see the force of the reasoning in favour of the removal. He thought that however humanity ought to lean towards a prisoner, still the proceedings of the court ought to ensure justice to the United States, and to the prosecution, and therefore that public justice ought to be as well guarded as the prisoner's convenience: a fair and impartial trial ought to be had, which he was certain could not be held in the county of Northampton, and if he were now applied to in his official capacity to take the necessary steps for that event he would refuse.

Mr. Rawle said there were opportunities enough for a motion like this to be made before a bill was found, after the parties were bound over. The accused ought to be preparing for trial from his first commitment, to remove all the inconveniences which delay until after the proceedings were going on would occasion: it appeared to him to amount to a *technical trap*, laid to involve difficulties. It was well known that the prisoner could not wait till it was too late to obtain many privileges to which he was entitled by an earlier attention to his interests, of which the present was one. With respect to the difficulties his honor, Judge Iredell, had mentioned on the indictment, they were too serious and important to be dispensed with.

Judge Iredell delivered his opinion to effect as follows:—With regard to the lateness of the application, as it does not relate to the merits of the defence, I think the arguments in favour of the motion preponderate, and that no advantage should be taken from the prisoner without full ground. It is evident that, in this case a number of circumstances might be mentioned which would render a trial inconvenient in the county of Northampton. I am inclined to think with the council for the prisoner, that the court have the power to order a special court to be held there if they should think proper, and therefore I should not scruple to admit it, if all concurrent circumstances admitted its prudence. The question then is, whether according to the legal discretionary power of the court, this court think it their duty to admit the force of the motion. When these offences were first known to have been committed, and when the gentleman with whom I have the honour to sit was in that country, it was possible for a court to have been ordered there for the trials, but it appeared to those with whom the power rest-

ed, to be improper. And why?—The preſident in his proclamation had publicly declared that the lawful authority of that county could not be carried into execution without the aid of a military force. Would it not therefore have been improper for us to order a ſpecial court to be held at that place? If a ſpecial court could not have been held there, the only thing to be done was to bind the parties over to this court.

There are two very important difficulties in the way of this motion, I ſay important, becauſe they are ſuch as no gentleman of the law can be perfectly clear upon them. Firſt whether, if we order a ſpecial court, we can order, by any proceſs known to the law, this indictment to be transferred to that court. This is a doubt ſtated by judge Wilſon, of the ſupreme court at the time of a former motion alluded to; and I am inclined to think this was a great reaſon which guided the deciſion, otherwiſe a doubt would not have been intimated. If this cannot be done, what would be the conſequences of the removal of the caſe? If this indictment were to be taken there, with a doubt in point of law on it, a motion might be made after trial, for a new trial, that not being regular, part having been held in another place. Whether this would be moved or not I cannot ſay, but I know at beſt it is doubtful. The court therefore ought to proceed in the cleareſt manner not to run the riſk of defeating the proſecution of a cauſe ſo important. It is the great deſire of this court to do the moſt impartial juſtice between the public and the priſoner, and not from private humanity on the one hand, or reſentment on the other, to lean either way. As to the common law principles of vicinage, there are advantages and theſe are diſadvantages attending it. The advantages are, that the parties are known by, and know their jurors and witneſſes, that their characters may be viewed, and the moſt impartial juſtice done. But if nearly one whole county has been in a ſtate of inſurrection, can it be ſaid that a fair trial can be had there? We may at leaſt preſume it could not, becauſe the preſident of the United States ordered a military force there, to enforce the execution of the laws. It was by this military force that the priſoners are now convened in this city, and I have reaſon to believe from the opinion and knowledge of the judge with whom I now act, that it would be exceeding improper to hold the trials there. It was hinted that troops are ſtill there, and they could promote the execution of juſtice; but what ſort of juſtice is that of the ſword? If they would operate at all it would be by intimidation, and this would be to the prejudice of the priſoner, and in no reſpect in his favour. This conſideration alone in my opinion would make it "manifeſtly inconvenient" for a trial to be held there. With reſpect to the principles of common law, the gentlemen well know that the *venire* may be changed, that is, that parts of the jury may be ſummoned from other counties. I do not know whether there is a power in the courts to change the *venire* in England in a criminal caſe, but I know that in ſome difficult caſes, where partiality was to be apprehended an act of parliament has been paſſed to remove the trial: this was done reſpecting the rebellion in Scotland, for the manifeſt reaſon of partiality. This proves that we ought not to look to one ſide only, but to both, and then form our determination.

Upon the whole I am clearly of opinion that if the motion could be granted without running the risk of these uncertainties, but certain inconveniences, it would not be expedient to grant the motion, and therefore the trial must go forward.

APPENDIX

No. II.

MOTION FOR A NEW TRIAL OF JOHN FRIES, FOR TREASON.

MAY 14.

MR. LEWIS informed the court that the other day in coming into court, he received a slight information, which he thought it his duty as advocate for the prisoner, to make farther enquire into, but it was not till this morning that he had been able to procure the depositions of witnesses to prove a fact, on which he meant to ground a motion. He read the depositions to the court, which imported that John Rhoad, one of the jurymen on the trial of John Fries, had declared a prejudice against the prisoner, after he was summoned as a juror on the trial. He now found that he could procure other affidavits to the same fact, on the ground of which he "moved a rule to show cause why there ought not to be a new trial."* He expressed himself aware of the lateness of the period, verdict having been given, but the impossibility of proving the fact earlier, was a sufficient apology. He should forbear to enter into the merits of the motion at present.

Rule was granted and made returnable to-morrow morning.

Wednesday, May 15.

MR. DALLAS said it became his duty as advocate for the prisoner, to lay before their honours the grounds on which they had moved for a new trial in the case of their unfortunate client, in which he was sensible some little violence must be offered to *his* feelings in whose behalf it was made, and particularly if judgment should at last be pronounced upon him; but whatever the event, it became their duty to prefer it, and he was certain that upon examination into the facts, they must be justified in producing them, as the event must alter the decision which had taken place. He was satisfied that the court, without direct reference to authorities, would be inclined to listen to any thing that could be offered upon good grounds in favour of life, or the chance

* *The prisoner had been brought into court in order to receive sentence of* death, *but on Mr. Lewis's motion for a rule to show cause, judgment was suspended, and he was remanded back to prison.*

of life. With this confidence, he relied on the favourable attention which would be paid by the court, and that the intervention of any trifling error in the proceeding, may not expose the defendant to the danger of a favourable decision.

In making the motion, Mr. Lewis had laid before the court some affidavits in order to prove that one of the Jurors, after he had been summoned to attend the trial did declare that the man should be convicted: in addition to that circumstance, the following reasons should have been assigned in favour of the motion:

First, That the marshal has, without any order or direction from the court or judges for that purpose, returned a greater number of jurors than he was by law authorized to do:

Secondly, That he returned them from such parts of the district as he thought proper, and without the direction of the court or judges:

Thirdly, That the trial ought to have been held in the county where the offence was committed, except manifest inconveniency should appear, and it does not appear from any part of the record of the court that any inconveniency did prevent it, for whatever were the acts of the court they ought to have been placed on the record, which not being done, is good ground for a motion.

Judge Iredell, did not think that the Court were bound to assign a reason for their judgment on the record of their proceedings, besides it was an high contempt at this time to call for the renewal of an argument whereon a solemn decisive opinion was delivered: he asked what part of the law required it: if it was at that time omitted, it was in the power of the court to order it now; or if they did not order the reasons to be inserted, the mere decision on the face of the record was enough to make it authoritative.

Mr. Dallas said there was no intention of offering a contempt to the court, and if there honors would attend they would be convinced there was not.—The judiciary act 29th section p. 67, vol. 1, Contemplates two things, first, trial shall be had in the proper county without great inconvenience should appear, but if it should so appear to the court, then, secondly, twelve petit jurors at least shall be summoned from the county. From this it appears that before the second branch of this clause can be executed, there must be a determination upon the first; it must be evident that there are too great inconveniencies to admit of the trial being held there, and then the second must take place; and further that it must be the act of the court to direct that twelve jurors shall be summoned from the county. The court have great latitude in this discretion; they have power to take the whole sixty from the county they please, but not less than twelve; if therefore this discretion is given, and given to the court, it is not in the power of any ministerial officer to exercise it without the direction of the court: they are to be returned as the "court shall direct." "These words more particularly relate to another branch of the section, to wit: from what part of the district from time to time the rest shall be called. The *venire* in this case was made returnable on the 11th of April, this precept directs that the marshal shall return a list of sixty petit jurors, and twenty four grand jurors, who appear to be all returned from the

county of Philadelphia. Your honors will obſerve that the marſhal has authority to ſummon not more than 60, nor leſs than 48. In this return he has ſummoned 60 from Philadelphia county, whereas twelve at leaſt ought to have been ſummoned from Northampton. The authority of this *venire* then is at an end, for it cannot be pretended upon any authority or precedent, in a civil or criminal caſe that a marſhal or Sheriff has ever attempted to exerciſe ſuch a power without a precept in form, commanding him: and the award appearing upon the record. This *venire* is completely ſatisfied, and all the authority given has been exerciſed in the return of 60, and if he has returned more he muſt ſhow authority for it. With reſpect to the weſtern inſurrection, Judges Patterſon and Peters did not adopt the ſtate regulations with regard to the number of jurors, but any deviation from that muſt be on the ſole authority of the court. 2 Dallas 341, 2. Mr. Patterſon was of opinion that the common law proceedings of the court of King's bench ought to guide their proceedings upon a queſtion of this nature, ſince the act of Congreſs ſays nothing about number, but refers to ſtate proceedings, which is guided by that common law. To ſhow the proceedings of Kings bench, and to prove that the court alone had the direction of the *venire*, Mr. Dallas quoted the following authorities: 4 Blackſtone 344, 3 Blackſtone 352 Cooks Littleton 155, or Keyling 16 2 Hales pleas 263.—beſides he ſaid the ſame ſection gave direction as to the manner of iſſuing writs of *venire facias* when returned by the *court* p. 68, *to issue from the office of the Clerks of the Court*. It is therefore incumbent on thoſe who vindicate the legality of the marſhal's proceedings, to ſhow that he acted with authority, viz. from the clerk's office directed by the court. To ſhow what authority he had to ſummon 89 jurors, when not more than 60 was uſual; to ſhow his authority for ſummoning *seventeen* from Northampton and *twelve* from Bucks. If you take it as one return it is a return of 89 jurors upon a precept which directs no more than 60, if you take the ſurplus number over 60 as a ſeparate return, there is no authority at all for making it.

Mr. Dallas ſaid he did not mean to controvert, for he reſpected the opinions of the Court, but reſpecting holding the trial in the county, he would refer to the 8th amendment to the conſtitution, p. 456, vol. 3. in theſe words, "In all criminal caſes the accuſed ſhall be entitled to a ſpeedy and public trial, by an impartial jury of the ſtate and diſtrict wherein the crime ſhall have been committed, which diſtrict ſhall have been previouſly aſcertained by law." Then referring to the judiciary act, and finding it there declared that the offender ſhould be tried in the proper county, the queſtion then is, whether this is not eſtabliſhing a diſtrict as it reſpects capital crimes, except "manifeſt inconvenience" prevent. If ſo, the place where the court is now ſitting is to be conſidered a foreign county, now where by *certiorari* an indictment is removed in the king's bench, and where the jurors are to come from a foreign county, then time muſt be allowed for the precept to iſſue, which muſt be in the rule of the record, 2 Hawk. c. 27, ſec. 1. This court is ſitting in the ſtate of Pennſylvania, and the juriſdiction of the court is co-extenſive with it, and ſo is King's bench with the whole nation of England: the proceſs of this court may be ſent into

any county in the ſtate, ſo may that of King's bench to any county in England, 4 Hawk. c. 41, p. 376—2 Hales pleas 260—4 Hawk. b. 2, c. 27, p. 171. Douglas 590. In the preſent precept there does not appear to be a return of 89 jurors authoriſed, but that 89 have been returned: the ſupplementary return was made by the marſhal without any act of the court, and with any *venire* being duly iſſued, or any award to ſummon this jury to try the priſoner. *Seven* of the perſons who were on the liſt impannelled to try John Fries, and who have given virdict, are not at all on the liſt ſummoned for the trial: how came theſe ſeven perſons then on this trial, reſpecting whom no *venire* was iſſued? They were not called to attend by any proceſs of the Court! This was not the caſe in the weſtern inſurrection, for then, though a greater number was ſummoned, it was upon the ſolemn deciſion of the Court, and by their order that the venire was iſſued. [he read the venire then iſſued] In that proceeding every thing is regular: the marſhal receives expreſs orders to ſummon 12 jurors from Allegany, &c. but where are ſimilar directions in the preſent caſe? 4 Blackſtone 369—4 Hawk. c. 31, ſect. 4, p. 240. ibid c. 27, ſect. 104, p. 175, are authorities to explain what is miſ-trial, and are a juſtification of the preſent application for a new trial. Hence it appears that a miſ-return of jurors is ſuch an error, if they actually paſs, as to make a miſ-trial, and the verdict is of courſe void. In this caſe 60 is returned upon a ſchedule with the names annexed, and on another ſchedule a return by the marſhal of 17 from Northampton county, and 12 from Bucks, to which the marſhal ſigns his name, but no proceſs was iſſued for theſe ſupplementary 29 names, and it is clear from the inſtrument that 60 compleated the return, only five of whom were on the trial of the priſoner, and the other ſeven had no right to try him, being drawn from a liſt which no proceeding had authorized. Where there has been no proceſs, no trial can proceed. Law of Errors, p. 65. We ſee what is the effect of a perſon intruding himſelf into the jury, who has not been lawfully ſummoned, 4 Hawk. c. 25, p. 16—the verdict is void, ibid. p. 17. This will be granted. Mr. Dallas here recapitulated the objections he had ſtated, and added that merely the appearance of the jurors, nor their having been ſworn, or having given verdict were objections ſufficient to overturn the motion.

He next made a few obſervations on the conduct of the juror, which he ſaid was not merely an expreſſion of opinion, but a previous determination, and an expreſſion of fear if the priſoner ſhould be acquitted, ſo that it was impoſſible to heſitate that, if this was true, the juror did not give verdict upon evidence, but was influenced by a previous bias, and prejudiced determination: his going into the box with this partial mind, deprived the priſoner of that chance which the law determines he ſhall have. It is neceſſary that every jury ſhould enter this box free from malice; but it was not ſo: this juror laboured under particular impreſſions, unfavourable to John Fries, becauſe he conceived he had been the leader of, and brought on this diſturbance, and therefore ought to be hung: this will be proved to have been more than once the language of the juror, and that he indulged himſelf in theſe expreſſions. After running from place to place, influenced by a

vindictive ſpirit of prejudice, to expreſs his deſires, can it be contended that he was capable of deciding on the guilt or innocence of the priſoner, by the weight of the teſtimony only? There cannot be found a ſtronger caſe in the books. It is not neceſſary or right to go into the teſtimony, or any of the circumſtances of the crime of the priſoner, to ſee whether the verdict was right or wrong; but it is neceſſary to view the determination of this juror, who wiſhed them all hanged, and particularized Fries. Firſt, his words were, "we will hang them all:" then he ſaid, "I myſelf ſhall be in danger, unleſs we do hang them all." This is not merely an opinion generally expreſſed, but the language of deſign to convict at all events. If eleven out of twelve jurors had been of opinion that an acquittal ſhould take place, and this individual ſuppoſing he was in danger had declared this opinion, and pointed out his view of the probable conſequences, would not the voice of the eleven be changed to guard againſt this danger? 4 Hawkins, c. 43, ſec. 28. p. 399, ſupports the doctrine generally, that if a juror has declared his opinion before hand, that the party is guilty, or will be hanged, or the like, it is good cauſe of challenge: but if from his knowledge of the caſe, and not from *ill-will* to the party, he has only declared his opinion, it is no cauſe of challenge. But even reſentment has not the influence upon a man's conduct which ſelf-preſervation has: ill-will is not the only ground of challenge; intereſt is as much ſo: if a man had laid a wager another would be hung, this is not ill-will, but would viciate the juror. Therefore we muſt conclude that "*ill-will*" in the above authority, is put merely as an inſtance. Whether theſe words were ſpoken in warmth or not, is immaterial; for it would be no alleviation; it is impoſſible that they ſhould have been expreſſed without ill-will; and therefore the man is not impartially qualified to paſs upon the life or death of the priſoner. Salkeld 645 and 11 Modern 118. Upon the general ground of what could be with propriety called miſconduct in the perſon ſummoned to diſcharge the duty of a juror with impartiality, he obſerved there could be no doubt upon the propriety of their aſking a new trial, nor upon the juſtice of one being granted.

Mr. Lewis mentioned 5 Bacon, 251—2 (old edition) and 4 Blackſtone 354—5, in order to ſhow, that in criminal caſes there ſhould be no new trial, unleſs it ſhould appear that the former trial had been attended with fraud, &c. and that a new trial in thoſe caſes might be granted after conviction, 11 Modern, 119. 5 Bacon, 243, and 3 ibid, 258 (old edition.) If he has declared his will, touching the matter, it ſhall be cauſe. 4 Blackſtone, 346, (old edition.) The direction reſpecting the *venire*, he ſaid, was entruſted to the law and not to the marſhal, and by that direction was exerciſed by the judges in 1795, and if that was neglected, it was not legally executed. The court could, as then, order the jury to be called from all parts of the State, and not to be left to the marſhal. 5 Bacon 242. is an inſtance in which a ſon was ſworn into the jury, (being the ſame name of John Pierce) inſtead of the father who was the perſon ſummoned to attend, whereupon a new trial was granted, becauſe the trial was held by only eleven qualified perſons as jurors. If the ſheriff did not follow the

direction of the law in respect to the *venire*, it was good cause for a new trial.

Mr. Sitgreaves said he did not think it necessary to controvert the position which had been advanced by the gentlemen on the other side: that the court have full power to order a new trial after conviction in certain criminal cases, as well as civil under certain circumstances; but notwithstanding the authority of the court to grant new trials was ascertained in some of the books, yet it would appear that this power had never been exercised in any capital case; no such case had been referred to, and he believed could not be found; he imagined the reason why it could not, was, although courts had the full power, yet the peculiar solemnity of a trial for a capital offence, and the great caution which was used to guard the security of the prisoner against improper bias, or wrong proceeding that may respect his guilt or innocence, with sufficient mounds to prevent intrusion, and therefore conviction in such a case had not yet been set aside. With respect to the qualification of a juror, objections as to the array or to the poll ought to be received by a court with uniform caution, after trial and verdict is passed, because there is so full and ample opportunities given to the prisoner to deliberately enquire and make a good choice: the whole pannel which are summoned, must be given to the prisoner; a certain time must be allowed before he can be called upon to answer the charge, sufficient for him to enquire the character, interest, affection, or partiality of the men: having this time and opportunity, so carefully secured to him by positive institutions of law, it is not to be wondered that objections afterwards should be cautiously received by the courts. After having these opportunities for examination, the law gives power to the prisoner to challenge 35 jurors arbitrarily, or without assigning a reason, and after that as many more as he can assign just cause of objection to, and they will also be set aside if his objection is well founded. To depart from this general view, and make the particular application, which is by no means irrelevant in a question of this nature, it is observable that the prisoner has actually had more than common power to select a jury to his mind: of this whole list 33 did not appear, and of the number that remained the prisoner challenged 35, so that he had 68 entirely in his power as much as though all had been present, and he had challenged 68. With respect to Mr. Rhoad the juror, there is something worthy of remark: When Mr. Rhoad came to be called, and there was some difficulty suggested as to his knowledge of the English language, although the court and prosecuting council saw the force of the objection, he was retained at the instance of the council for the prisoner, because they had exhausted all their challenges, and they did not know that the next would be so agreeable.

Mr. Sitgreaves next stated to the court what he thought to be the unquestionable principles of law on the point in question.—If a motion for a new trial is received in a court for a criminal cause, it is under the same rule and circumstances as for a civil cause, and in both depends on the *discretion* of the court, and that discretion ought to be governed, not by any precise set of rules now known in law, but in any

way that will beſt perpetuate juſtice, except there ſhould appear a mandatory, imperative rule. If the law ſays that upon conviction of a certain crime, a certain puniſhment ſhall enſue: this is peremptory, and the court have no power to depart from ordering that puniſhment. Wherever a diſcretion is left, it is meant that the court may uſe that diſcretion, according as the nature of the caſe may require, and this is left in the conſcience and mind of the court alone, agreeable to circumſtances which grow out of the juſtice applying to the particular caſe. In the preſent caſe therefore, the court are not to be governed by any ſet of preciſe rules, but by an opinion of what will beſt perpetuate *public justice*. To be ſure it is a rule, that a new trial ſhall be granted where a verdict is given againſt evidence, but even then it has been frequently refuſed, where they ſee the caſe is plain. In civil cauſes it has been refuſed, when not to the intereſt of juſtice to grant it. 2 Burrows, 936.

Judge Iredell ſaid he had not diſcovered any *dictum*, which diſtinguiſhed civil from criminal cauſes, ſo that equal juſtice ought not to be adminiſtered; but if either, ſurely a criminal caſe called moſt ſtrongly for juſtice: it would never do to apply caſes ſo far, as to ſay, that if one man upon a jury was diſcovered not to be fully impartial, a new trial ſhould not be granted, when a man's life was at ſtake.

Judge Peters ſaid he always underſtood, that the power of granting a new trial, was in the diſcretion of the court; and that its opinion ought not to be turned by any vagaries, which ſhould be preſented, but be governed by a reference to legal diſcretion; but at the ſame time, he could not ſay that the court ought to throw entirely out of their view, all the evidence which had been given in the trial, and every thing that had been done. If in the ſcale of juſtice, there ſhould appear to be any error, and the caſe is any way doubtful, then the court will take advantage of a trifle, in order to grant a new trial; but where the court has been fully convinced that the verdict is right, then the evidence ought to have ſome weight, as well as the law.

Mr. Dallas obſerved, that the motion was not in any regard to evidence, if ſo, the weight of evidence muſt be conſidered; but it was alone on the point of law, totally independent of evidence.

Mr. Sitgreaves contended, that where a trial was neceſſary for the purpoſes of juſtice, it reſted between the judge and his conſcience, and he was not to be governed by any preciſe ſtate of facts here or there: if, as is unqueſtionably the caſe on the preſent occaſion, a trial has been held, which for the patience of inveſtigation given to it by the court and jury, has ſcarcely had its equal in this, or any other country; where the priſoner has had every indulgence, and every capacity of talents, which this ſtate can afford, to aſſiſt him in his defence; if after all this, a conviction has been the reſult of this minute and laborious examination, it will at leaſt be allowed, that the objection which ſhould have the ultimate effect of ſetting aſide a deciſion and inveſtigation ſo ſolemnly and deliberately taken, ſhould be grounded upon no ſlight matter, but that the reaſon ſhould come compleatly

authenticated, ſo as not to leave a doubt, or the leaſt ambiguity. If the facts related in the affidavits, had been known to the priſoner, and mentioned when the juror came for his array, undoubtedly, the legal inveſtigation would have taken place, and a ſolemn deciſion paſſed thereon, which if true, would have been to diſqualify the juror. Mr. S. explained the different modes of challenge, and proceeded to queſtion the relation of the affidavits—that theſe were words, ſaid to be ſpoken a conſiderable time before the trial, " ſome days :" the trial had been nine days before the court, and it was probable, this declaration muſt have been made fifteen days at leaſt, that this important and often repeated converſation ſhould reſt all this time in the minds of the witneſſes, without a diſcloſure, was very extraordinary, particularly ſo, when it was conſidered that they attended the court every day, and at laſt the affidavits reſted on the memory of the witneſſes, which muſt be very liable to miſ-apprehenſion and error. This is good reaſon for the objection, that the application is too late, and ought, in a matter of ſo much importance, to have been mentioned ſooner, if in the knowledge of ſo many people, at ſuch repeated converſations as the gentlemen conceived.

Mr. Sitgreaves was proceeding here to read a written declaration of Mr. Rhoad (the juror) as to the circumſtances of the converſation, which as it was not ſworn to, was objected by the priſoner's counſel; the juror was at length ſworn, and the depoſition was read to the court. Mr. Sitgreaves ſaid he read this, to ſhow how eaſy it was to miſapprehend not only the meaning of words, but the words themſelves. Another thing to be obſerved was, two of the witneſſes themſelves at that moment, were priſoners out upon bail, under indictment for miſdemeanor, and therefore the affidavit of ſo reſpectable a citizen as the juror, denying the fact, left a ſerious doubt as to the truth of the others' depoſitions, but more as to the probability of miſtake in the relation. Mr. S. then went into a compariſon of the affidavits, which he contended were very diſſimilar, and had much the appearance of wrong ſtatement. Whatever may be the difference of opinions, as to the diſcretion of the court, when they are fully ſatisfied that the crime is well aſcertained, both as to law and evidence, yet it would not be doubted as the unqueſtionable right of the court, to inſtitute the moſt ſevere ſcrutiny in a matter which endangers the whole of the former proceedings; the former proceeding which muſt be valid, unleſs the moſt unequivocal teſtimony ſhall intervene to change it.

Mr. Sitgreaves ſaid the converſation was of a general nature, and not to the priſoner in particular, agreeable to the affidavits generally: it ſpoke of the general effects of the inſurrection in that country: indeed it was not to be expected in a matter of ſuch public concern as that unhappy affair, but every man would expreſs his opinion, and particularly thoſe who reſided on the ſpot; therefore it could not evince any prejudice, and conſequently not be lawful challenge to the juror. He referred to 3 Bacon new edition Letter E ſection 12. One affidavit only particularized Fries; and yet it appeared from Mr. Rhoad's depoſition to relate to one converſation only, therefore it was evi-

dent that the relations differed, and were of courſe of a ſuſpicious nature. If a man draws a deduction from what he has heard, or from his own knowledge of an event, and not from "ill will," it is no proof of prejudice or partiality, he is ſtill "indifferent" and open to impreſſion: there muſt be an expreſſion of malice, of determination, to a particular caſe, and in a particular way.

Juſt cauſe of challenge may be, if one of the grand jury is impannelled on the petit jury, becauſe he may be ſaid to have already "paſſed upon the caſe in iſſue" 2 Hawk. 29. C 43. Where an action is dependant between a juror and defendant, it is then challenge to the favor, Viner 21 title *juries* h. d. Cook Littleton 157 d. Nothing that is merely an expreſſion of opinion is cauſe of challenge: nothing but what flows from a malicious heart againſt the priſoner in particular; all the caſes ſhow the diſtinction, and there is not a ſingle caſe in which the declaration of a juror has been made cauſe of challenge but to the favor, in which caſe triers are appointed by the court to examine whether this prediſpoſition does or does not appear. The preſent caſe therefore is not cauſe of particular challenge, but of challenge to the favor, which was not made in time. Mr. Sitgreaves then referred the court to ſome authorities 2 Rolls abridgment 657—21 Viner title trial 266 and 272—1 Salkel 153 and one which occurred in this ſtate when one Ann Clifton, was convicted for murder, and one of the jurors had made declaration before he was ſworn reſpecting the guilt of the priſoner.

Judge Peters ſaid that he had given the marſhal directions to ſummon jurors from Bucks and Northampton: he was not certain whether it was given in writing or verbally, but leſt it ſhould not have been in writing he now gave it to the prothonotary of the court. At the firſt appearance of it, he did not know whether it amounted to treaſon, and therefore he thought particular directions not neceſſary, but afterwards, finding it more ſerious, he gave the directions which had guided the marſhal.

Mr. Rawle thought it eaſy to prove that the marſhal was fully authorized to ſummon from what part of the ſtate he pleaſed, unleſs the court interfered by a ſpecial direction, and then he was bound to obey the mandate. The marſhal no doubt underſtood that he was to ſummon from the ſtate at large, conformable to the directions of the law. With reſpect to the weſtern inſurrection, the fiat of the court was obtained, but it was not ſo in the preſent caſe. Mr. Rawle, here appealed to the prothonotary to know whether any inſtance of a ſpecial direction of the court reſpecting *venire* had occurred ſince that period in any capital caſe. Mr. Caldwell anſwered there *had not*.

Mr. Rawle went on to mention the progreſs which had been made, and the time and opportunities of which the priſoner might have availed himſelf, but theſe he had neglected, and at this period, he came forward by his counſel to challenge the array! Challenge, he obſerved, was of two kinds, the poll and the array; if challenge was made to the poll, and the trial went on, challenge to the array could not be made, becauſe exception was before made, but he thought it was clear the time was paſſed at which he might have availed himſelf of the cha

lenge to the array. It was contended that the marſhal had not made a proper return to the *venire*, but authority had not been produced to prove the point, yet authority could be found to prove that after the poll had paſſed, even before the trial, the array could not be challenged, becauſe that was paſſed too, but to what a much greater length had the preſent objection been delayed? After having taken the chance of the verdict, and finding it unfavorable, then to ſay it was irregular, and for a reaſon which might have appeared ſooner, he quoted 12 Mod. 567 and 584. 2 Lord Raymond 84, refering to the time when exception may be made.

Farther, after all the chances which a priſoner could have, and complaints made of irregularity as to the venire, the objection was farther extended to a man who was ſummoned from the very county where the crime was tranſacted! Upon this man the priſoner was willing to put himſelf for trial, rather than one he did not know. See Danver's abridge. 354, 5 and 7. With reſpect to the number returned. Mr. Rawle referred to Crookjames 467. 2 trials per page 599. 21 ſtate trials, 707. There might be more than 60 returned: in regard to the weſtern inſurrection he ſaid there were 108 ſummoned. The words of the venire directing the marſhal are, that he *cauſe to come to the court*, ſo many a certain day; it is therefore proper that a certain number ſhould attend, and to enſure the number neceſſary to meet the challenge, the marſhal uſually ſummons a greater number than are mentioned, but if a greater number do attend, then the ſuper-numerary are ſtricken off. In the preſent caſe the number in the venire was exceeded by 29, and yet 38 leſs attended at any one time than were ſummoned, the priſoner had been tried by one of theſe 50, ſeven of whom were from his own neighborhood, and men in whom he thought he could place his life with ſafety. In order to confine the number within ſome bounds ſo as not to exceed reaſon in caſe a marſhal or ſheriff could be found to make that improper uſe of his power, and take the citizens from their buſineſs or their homes unneceſſarily, an officer ſo offending can be proſecuted for miſdemeanor, but this was not the caſe. Where there is more than a ſufficient number ſummoned for the purpoſe of trying a civil cauſe, which in Pennſylvania is confined to 48, and more than that number ſhould attend, and one of them ſworn on the trial is taken from thoſe over the 48 that attend, then no doubt it would be miſtrial, becauſe the ſummons was unlawful; ſo in the preſent caſe, if one of the jurors had been of the 28 over the number 60, had more than 60 attended it would have been a miſtrial, becauſe the venire ordered the marſhal to cauſe but 60 to appear, (but that objection even would have been inſufficient at this ſtage of the trial) and more he had no right to bring.

As to the propriety of ſummoning 12 from Bucks and 17 from Northampton, there appears to be no wanton exerciſe of power in the marſhal, becauſe he acted under the authority of the judge of this court. The gentlemen could not ſhow an authority which made it neceſſary for the marſhal to have a certificate to empower him to do this, and if it was neceſſary, the certificate of the judge appearing upon the record would make it valid. But even if he had not receiv-

ed the authority of the judge, the act of Congreſs would have been a ſufficient warrant for his conduct. P. 67 vol 1. twelve at leaſt are to be ſummoned from that county, and 17 are ſummoned. The act of ſummoning is properly the buſineſs of the marſhal, if he has official notice, *in any ſhape*, that ſuch a trial for a capital offence is coming forward, which would entitle the priſoner to be tried by twelve jurors from the proper county if he makes the proviſion which the law requires, he has abſolutely and completely acquitted his office, as well technically as formally. The return which has been produced embraces the whole number of 89, ſixty of whom are of the county of Philadelphia, and if there is any technical alteration in the form neceſſary to give it legal preciſion and effect, it is now in time to alter it, but there is none neceſſary.

Mr. RAWLE ſaid he conſidered this proceeding as having received the full ſanction of the court, in the certificate given by the judge. Firſt becauſe no oppoſition had been made to it, and ſecondly becauſe (the whole number not having appeared) it was not excepted to at that time. The liſt out of which the ſeven jurors from the country were taken, he called a ſupplementary liſt, which completed the former liſt, and though not annexed to that pannel was connected with it, filled up and made a part of it, on which an award was entered. The caſes referred to had reſpect to a foreign country, but in a diſtrict, one county was not foreign to another, and therefore Bucks, Northampton and Philadelphia, ſtood in one exact ſituation. 2 Hawk C. 41. B. 2. Dyer 118.

Mr. RAWLE concluded by ſaying that he looked upon all the proceedings in the preſent caſe as perfectly regular and compleat, to which no exception could juſtly be taken by the priſoner, and he hoped the effort would miſcarry, ſince every means had been uſed in the defence during the long and patient inveſtigation which had taken place, and after a verdict had been ſo ſolemnly pronounced by men whom the priſoner had ſuch a fair means of chuſing to anſwer his beſt purpoſe.

The attorney general, and council agreed, and the court ordered that the deponents ſhould give teſtimony, and be croſs examined in court, on each ſide. Alſo that the witneſſes ſhould be examined ſeparately, and kept out of the court, ſo as not to hear the evidence given by each other.

Thursday May 16.

NICHOLAS MAYER's Depoſition.*

* *The reporter has introduced the depoſitions immediately before the oral teſtimony, in order to give a fair opportunity of examining into the correſpondence of the two relations.*

The United States,
v.
John Fries.
Pennſylvania, ſs.

NICHOLAS MAYER of the city of Philadelphia being duly ſworn, maketh oath, and ſaith, that ſome time after John Fries, above-named, was brought to this city, this deponent went to a place called Leſher's yard, near the Northern boundaries of the city of Philadelphia, and in going into it, he ſaw ſeveral people there from Northampton county, and among others, Mr. John Rhoad of the ſaid county, who afterwards ſerved, as this deponent is informed, as a juror, on the trial of the above indictment, againſt the ſaid John Fries—That the people then preſent were talking about the ſaid John Fries, and one of them ſaid, "ſome people think he will be hung." This deponent anſwered "I do not think he will be hung." On which the ſaid John Rhoads ſaid "what of it, if Fries will be hung—ſuch a man like him ought to be hung, who brings on ſuch a diſturbance."—That ſome of the perſons with whom the ſaid John Rhoads was then talking appeared to be of a different opinion from him, and they were diſputing about it; and the ſaid John Rhoads appeared to be quite ſerious and a little warm, in what he then ſaid reſpecting the ſaid John Fries; and this deponent further ſaith, that he never mentioned any part of the foregoing converſation to the ſaid John Fries, nor hath he any reaſon to believe that the ſaid John Fries hath any knowledge thereof.

NICHOLAS MAYER.

Sworn in open Court, May 14, 1799.

(A true copy,)
D. CALDWELL, Clk. Circuit Court.

NICHOLAS MAYER's oral Teſtimony interpreted.

MR. LEWIS—You were preſent at a converſation in which John Rhoad a juror on the trial of Fries, was in converſation on the event of the inſurrection, &c. pleaſe to inform the court the particulars of it.

WITNESS. The words I heard from Mr. Rhoad were ſpoken in German, it was at Seidell's tavern in the Northern Liberties—when I came into Leſher's yard I ſaw ſeveral people there from Northampton county whom I knew, among others was one Mr. Rhoad, whom I know very well: they were talking about Mr. Fries: one man ſtood up and ſaid he thought Mr. Fries would be hung, I replied myſelf that I did not think he would be hung; with that Mr. Rhoad began to ſay, in German, "what of it, if Fries was hung; ſuch a man as Fries ought to be hung," and he appeared to be very warm, which ſurpriſed me. I went away then, and left them ſtill arguing about it; they were talking about Fries.

COURT. Do you remember the time?

WITNESS. I cannot remember exactly: it was ſome time after Fries was brought to town; perhaps three or four days.

COURT. Did you go into the houſe at all?

No, I was not in the houſe.

Do you remember whether Harman Hartman was preſent or not?

No, there were ſome people there, but I do not know who.

Do you know Daniel Heberly?

No, I do not.

COURT. Do you remember whether Rhoad ſaid any thing, and what, as to Fries bringing on the diſturbance?

I cannot ſay as for that.

After the queſtion was put the ſame again, upon a ſhort recollection the witneſs ſaid. Yes.

Do you think you heard all that paſſed upon that ſubject?

No, I did not.

The United States,
vs.
John Fries.

Pennſylvania, ſs.

DANIEL HEBERLEY of Macungy townſhip, in Northampton county, being duly ſworn, maketh oath and ſaith—That a day or two before the above indictment commenced, he, this deponent was at the houſe of an inn-keeper in this city, whoſe name he does not recollect, where he ſaw John Rhoad, one of the jurors on the trial of the above indictment, and ſeveral other perſons who were converſing reſpecting the ſaid John Fries, and the other inſurgents, when the ſaid John Rhoad ſaid "that they ſhould hang all theſe chaps, and that they "ought not to be permitted to live in the country."—This deponent never mentioned any part of the ſaid converſation to the ſaid John Fries, nor hath any reaſon to believe that he hath any knowledge thereof.

DANIEL HEBERLEY.

Sworn in open Court, May 14, 1799.

(A true copy.)

D. CALDWELL, Clk. Circuit Court.

DANIEL HEBERLEY's teſtimony interpreted.

MR. LEWIS. Relate to the court whether you were preſent at a converſation between Mr. Rhoad and others about John Fries, and where and when it occurred.

WITNESS. It was on a Monday or Tueſday, I am not certain which, of the firſt week after I came to town, and it happened in Seidell's room.

ATTORNEY. Were you not down twice?

WITNESS. Yes, but this was the laſt time: (about the 24th of April, he came to town the 22d,) they were talking together, Rhoad and Shankweiler at the ſtove, about the buſineſs they were come down to the city upon—I did not pay very particular attention to all that they ſaid, but I underſtood ſo much as was ſaid, that they would hang the whole tote of them, but particularly Fries: Rhoad ſaid this: I did not pay particular attention to the reſt, but this I particularly minded in order to tell his comrades, that he might be ſtruck off the

liſt of jurymen, and not come upon the jury: ſo I immediately informed captain Jarrett of it.

COURT. Have you had any converſation with Jarrett to day?

WITNESS. No, I did not ſpeak to him, but I ſaw him in the court.

COUNSEL. Did Rhoad ſay any thing like this: that theſe people ought not to live in the country, and if he did, what was it?

WITNESS. I paid no attention to that: I was not very near, and did not hear that: there was a pedlar in the room that laid his pack on the table between Rhoads and me.

COURT. Did or did not Rhoad keep ſaying other things although you do not know what they were?

WITNESS. I know that he ſpoke more to Shakweiler about it, but I do not recollect what it was.

The United States,
vs.
John Fries.
Pennſylvania, ſs.

HARMAN HARTMAN of Macungy townſhip, in Northampton county, being duly ſworn, maketh oath and faith, that about three or four days before the trial on the above indictment commenced, he, this deponent was at the houſe of —— Seidel, inn-keeper near the northern boundaries of the city of Philadelphia, where he ſaw John Rhoad, one of the jurors on the trial of the above indictment; and ſeveral other people who were converſing reſpecting the ſaid John Fries and other perſons late charged with treaſon, when ſome of the perſons preſent ſaid "it was hard they ſhould be ſo long in priſon and ſo far from home," when the ſaid John Rhoad anſwered "it was very right, he was glad of it, and that they ſhould hang every one of them." And the ſaid John Rhoad further ſaid "that he ſhould not be ſafe at home if they did not hang them all." This deponent never mentioned any part of the above to John Fries, nor hath he any reaſon to believe that he hath any knowledge thereof.

HARMAN HARTMAN.

Sworn in open Court, May 14, 1799.
(A true copy.)
D. CALDWELL, Clk. Circuit Court.

HARMAN HARTMAN's Teſtimony interpreted.

WITNESS. I was at Seidell's tavern three or four days before the jury were called upon, to try Fries—the Monday or Tueſday before the trial began. There was a converſation held by ſeveral perſons ſaying it was very hard for them that they muſt be down here, and ſome of them in gaol. Whereupon Rhoads ſaid he was glad it went ſo, or he (Rhoads) ſhould not be ſafe if they were at home: they ought all to be hung.

COUNCIL. Who was by at the time beſides Shankweiler?

WITNESS. There was another perſon bye, named Adam Stephan, from that part of the country, that heard it.

COURT. Did he mention Fries's name or not?

WITNESS. I cannot particularly ſay, I did not pay particular attention at that time, but they had conſiderable converſation, and that was the purport of it.

Were many people in the room?

Yes, the room was very full, and I was engaged in converſation myſelf, therefore I did not attend particularly.

COURT. Did you hear the whole converſation, or only a part of it?

Only part of it: I came in, and they were then converſing already.

ATTORNEY. Was Heberley in the room?

Yes, Heberley, Stephan, Shankweiler and more, but I do not recollect them.

Do you know Nicholas Mayer?

No, I do not.

ATTORNEY. Who did you mention this converſation to afterwards?

WITNESS. I do not recollect that I mentioned it to any body.—I afterwards paſſed by ſeveral times, and ſaw Rhoad ſpeaking to other perſons: I thought it rather hard before they knew what the crime was, that they ſhould ſay ſo much.

Did you mention it to no one? Recollect.

I believe I mentioned it to ſome of the people who lodged in the ſame houſe: Henry Jarrett was one of them.

ATTORNEY. Had you any converſation with Jarrett to day upon the ſubject?

WITNESS. I ſpoke to him this morning out of court, but nothing particular. Since that I mentioned it to Henry Schiffert, Valentine Keenly and Dewald Aldbrecht, but cannot particularly recollect what time I mentioned it.

COURT. Did you mention to any of them before the trial came on?

WITNESS. Yes.

COUNSEL. Did you ever mention it to Fries?

WITNESS. No, I never had an opportunity—I never knew his name 'till this diſturbance took place.

HENRY SHANKWEILER, ſworn. Teſtimony interpreted.

Were you preſent at any converſation between Rhoads and others reſpecting Fries, &c.

WITNESS. Yes; it was at Sidell's tavern.

When?

It was the week after I came down—ſince the court began.

ATTORNEY. What time of the week?

WITNESS. I think towards the latter end—Thurſday or Friday.

COUNSEL. What paſſed there?

WITNESS. Rhoad ſaid it was very well it happened, or went on ſo, for they ſhould be no longer ſafe at home elſe.

What went ſo?

That the people were taken priſoners.

Relate how the converſation began, and what were the very words, as near as you can.

WITNESS. Some of the country people ſaid it was very hard they were brought down here priſoners; in anſwer to that Rhoad uſed theſe words. Rhoad further ſaid, that they ought to be hanged, and Fries muſt be hanged, for he had been the leader of it, or of them to go to Bethlehem, and he took the priſoners from the Marſhal.

ATTORNEY. Were Hartman and Heberly preſent?

WITNESS. Yes, I ſlept with them in the ſame room.

Do you now ſleep with them?

Yes.

COURT. Did they ſleep in the ſame room with Rhoad?

Yes, all three of us.

COURT. Did the converſation paſs in that room?

WITNESS. The converſation was down ſtairs, where they were, in the bar room drinking; but he related the ſame up ſtairs too.

COUNSEL. Do you know John Fries?

The firſt time I ſaw him was at Bethlehem.

Did you ever ſee him ſince?

Only here in court, except once at Mark's, when I came to Philadelphia to deliver myſelf up.

Did you ever tell Fries of this?

No.

HENRY JARRETT, ſworn.

COUNSEL. Do you know Daniel Heberley?

Yes.

Did he communicate to you, and at what time, a converſation between Rhoad and others about Fries?

WITNESS. I cannot particularly mention the day, but one day he came to me in the court houſe at yon window, telling me that I muſt tell either Fries or his attorney that he ſhould challenge him, becauſe he had ſaid at Seidell's tavern that Fries muſt be hung.

Did he tell you any thing farther?

No.

How long was this before the trial begun?

I cannot tell, but it was before.

Did you tell either Fries or the counſel?

I believe I did not, but I think, if I am right, I told it to ſomebody. I had not ſeen Fries, only in the bar, and never told him.

After a ſhort pauſe, the witneſs thought he had told it to Judge Mulhollan, but was not certain. I told it ſeveral times, but I cannot ſwear when or to whom.

Evidence againſt the motion.

JOHN MULHOLLAN, ſworn.

He depoſed that he had a diſtant idea, ſomething like a dream, but had no recollection of what it was. On the court applying the queſ-

tion, he did not recollect any thing said to him by Mr. Jarrett about challenging Rhoad, but he was not certain whether he did not say that he would not like to be tried by him.

COURT. Did he assign any reason?

WITNESS. No, I believe not.

COURT. Had you any conversation afterwards with John Fries on that subject, or did Fries ever consult you as to the challenge of his jurors?

WITNESS. No, never.

COURT. Nor his counsel?

WITNESS. Yes, they asked me what I knew of the jury: I told them nothing, but from the temper of the times I would rather lie in prison for years than be tried at this time.

COURT. Did you mention to Fries what Jarrett told you?

WITNESS. I do not know; I took but little notice, but let it pass on.

The deposition of JOHN RHOAD.

United States,
vs.
John Fries.

Having heard three depositions read in the above cause, to wit: the depositions of Herman Hartman, Daniel Heberley and Nicholas Mayer, I do solemnly declare, that I never did use the expressions imputed to me by these deponents.

I recollect that I was in conversation with sundry persons at Seidell's tavern, at which, the said Hartman, Heberley and Mayer were present, in which the late disturbances in Northampton county were mentioned, and I there expressed myself to the following effect, and no other effect nor purpose whatever, viz. "That unless a stop was put to "such proceedings, as have lately taken place in Northampton county, "especially at Bethlehem, I would not wish to live in that part of "the country."

And I have not, at any other time expressed myself to the effect, stated in those affidavits.

I further declare, that I went to the trial of the said John Fries, with a mind perfectly open to conviction, as to his guilt or innocence, and that before I assented to the verdict, I deliberately weighed and considered all that had been adduced in his favor.

JOHN RHOAD.

Sworn in open Court, May 15, 1799.

D. CALDWELL, Clk. Circuit Court.

The oral Testimony of JOHN RHOAD (interpreted.)

Mr. SITGREAVES. Do you recollect any conversation between Shankweiler, Heberly, Hartman and yourself at Seidell's tavern?

WITNESS. Yes, perfectly well, but I do not recollect that they were all present: some of them I know were. They said it was hard for them (Fries and others that were here) to come down, as they were

in poor circumſtances, it would coſt them ſo much trouble and expence, whereupon I ſaid that it had been very hard for us (the witneſs and others in that country) in the winter and in the ſpring to be up there: I think I ſaid that if the government had not power to bring thoſe people to trial, or before the court, we could not live in the country, nor in any other country: whereupon they ſaid that the priſoners got ſeverely puniſhed for it; I ſaid that the puniſhment would be according as the law would inflict. They then diſperſed—this was in the yard, before the door at the ſide of the houſe.

ATTORNEY. Had you any converſation of the ſame kind in the room or by the ſtove?

WITNESS. Yes, I talked about it with Hartman near the ſtove.

What time?

It was in the firſt week, toward the latter end of the week, near as I can recollect, but I cannot perfectly recollect. Hartman did not ſay it plain, but he as much as gave me to underſtand that it was hard, or not right that they (the priſoners) ſhould come into that trouble, for that two might ſwear againſt me and bring me to the ſame place; I thereupon ſaid that neither two nor ten of them could bring me to the ſame place, as I had never drawn in the ſame yoke with him, (Hartman) againſt the government. If they were to ſwear, I would prove before all the magiſtrates in the place, that I never had any thing to do with it, but was always in favor of government. This is all I can recollect.

ATTORNEY. Was there nothing at this converſation ſaid about Fries and the other people?

WITNESS. No, I then went away from the ſtove.

COURT. Did you ever talk with Shankweiler about it?

WITNESS. I believe he was preſent.

Did you to Herberly?

He was likewiſe there—in the houſe or at the door.

COURT. Do you recollect ſaying to either of them that they (the priſoners) ought to be hanged—either in the ſtove room or in the bed room?

WITNESS. I do not recollect that I ſaid any thing. I took particular care not to ſay any thing of that kind, ſince I have been ſummoned on the jury, becauſe I new it was neceſſary to take care.

COURT. Some were ſaying you were warm: were you warm or offended in conſequence of what Hartman ſaid to you?

Yes, it was diſagreeable to me, and offended me, elſe I ſhould not have ſaid ſo much.

ATTORNEY. At the firſt time you come down had you converſation with Nicholas Mayer, or any body elſe?

I do not recollect: I know I have ſeen Nicholas Mayer before, but cannot ſay where.

How long did you ſtay in town the firſt time?

From evening till the next day at noon only—I came in about eight o'clock, and went away about three or four next day.

COURT. Did you ſay any thing about the proceedings at Bethlehem in Northampton county?

WITNESS. I recollect that there was a talk, but I cannot recollect the converſation itſelf.

Do you recollect ſaying that you would not wiſh to live in the country, except a ſtop was put to ſuch proceedings?

Not at that time, but I believe I recollect ſomething of the kind afterwards.

COURT. What did you ſay?

WITNESS. I ſaid that if the government had not the power to puniſh the evil, or evil doers, I would not wiſh to live in ſuch a country. I do not recollect any more.

COUNSEL. At this laſt time did you ſee Nicholas Mayor?

I did ſee him; but I am not certain whether it was before the door, or in the houſe.

COURT. When did you come to town the ſecond time?

WITNESS. On the 22d of April, at eight in the morning.

COUNSEL. Had you any converſation with Mayer then?

I never had any converſation with him, but I ſaw him in the yard.

MICHAEL SNYDER was next ſworn as to the character of John Rhoad the juryman; he depoſed that he had known him 27 or 28 years, during all which time he had been a good character, and a man of veracity. He did not think he would talk farther then he could make appear.

JOHN MORETZ depoſed that he had known him about 25 years, he was a very clever honeſt man; a man of truth as much as he knew of him: he could ſay nothing againſt him.

PHILIP WALKER did not know him very particularly, but he never heard any thing amiſs of him: as much as he knew of him he was an honeſt man.

JACOB ARNOT junior had been acquainted with Mr. Rhoad ſome years, and believed him to be a man of unblemiſhed character, as good as any in that country.

MR. SITGREAVES ſaid he would not have troubled the court again upon this queſtion, had circumſtances reſted as they were before the evidence, but upon inveſtigation palpable differences would be diſcovered between the affidavits and the verbal relations, not only of the deponents with themſelves, but which other. He then analized and compared the affidavits of Mayer, Heberly and Hartman, which he only recommended to the examination of the court, and he thought the difference muſt appear ſo eſſential as to give a ſerious doubt of the accuracy or truth of either, while the character of Mr. Rhoad was unimpeachable.

MR. LEWIS ſaid if any trifling difference appeared in the affidavits from the relation, it was eaſily accounted for in the manner the affidavits were taken: thoſe of Heberly and Hartman, were taken in his office, and interpreted by a German, from whom he had very great difficulty to collect the meaning in Engliſh. Only one of theſe affidavits were taken by himſelf, the other by Mr. Ewing, a young gentleman, ſtudent in his office [Mr. Ewing corroborated the fact: "that he could not underſtand what the interpreter ſaid."]

Mr. Lewis then mentioned the grounds upon which the rule to ſhow cauſe had been granted; whether either, or all of theſe grounds had weight in them, he would not undertake to aſſert; but certain it was, that it was the duty of the priſoner's counſel to lay them before the court, and wait the event, which if favourable, would cauſe a new trial: if not, they ſhould be ſatisfied with having diſcharged their duty; in either caſe, they ſhould cheerfully ſubmit to the opinion of the court; and he was ſorry to ſee that the laſt queſtion, to wit, That the trial ought to have been held in the proper county, had given any diſcompoſure to the court: he then explained the reaſon, to ſhow the court that it was not agitated out of any diſreſpect to their former deciſion, which was that "manifeſt inconvenience" did prevent the trial being held there, but this did not appear on the record. In criminal proſecutions, and eſpecially capital caſes, it was uſual for the priſoner's counſel to avail themſelves of every ſlip and inaccuracy, and therefore he was excuſeable in the preſent. He quoted 4 Burrows, 252.

It was common for the court to err, and in ſuch a caſe, he conſidered himſelf in duty bound to point it out to them, and he was ſatisfied if that error was of conſequence enough, the court would grant a rule thereupon, and thus retract from their former opinion, which they were fully authoriſed to do. He referred to 3 Blackſtone 391—1 Burrows, 393.

Mr. Lewis then went on to point out the propriety of granting a new trial in criminal as well as in civil caſes, although the proſecuting counſel, had enforced the want of precedent, as a reaſon againſt it; indeed he ſaid it was evidently of more conſequence, and therefore he ſuppoſed it had been the more ſtrongly oppoſed: a man's life and his fame was of more value than a part of his property, and he had no doubt that, whatever might have been the verdict, the court would go as far in granting it. It was admitted that the court had the power, if it had the power, there was no doubt but the honorable judges would exerciſe it according to their conviction.

Mr. Lewis ſaid the council for the priſoner did not come forward to prove that the verdict was given againſt evidence, but to inſiſt that the priſoner had been tried by eleven jurors only, for the other ſtood indifferent as he ſtood unſworn, they went further—they went to prove that there was an eſſential error in the pannel, and thus the priſoner was bereft of thoſe benefits, to which the law entitled him. If we prove this, ſaid he, we do not addreſs ourſelves to the diſcretion of your honors; it is not a matter of will, it is a matter of juſtice, to which we are entitled. As it reſpects the evidence, you are not at all to conſider its weight: the evidence may be clear, and yet the verdict may be wrong given, becauſe of the incompetency of the jurors. The gentlemen have ſaid the period for application is paſt—it is too late,—but with all their talents and induſtrious reſearches, thoſe learned gentlemen have not been able to produce a ſingle authority to ſupport the doctrine that it is too late; after conviction, or even after condemnation, the court have authority to order a new trial; no time is ſpecified to limit the diſcretion, if the reaſons are

good. If the law has not diſtinguiſhed the period, thoſe gentlemen are certainly unwarranted in ſaying it is too late. 2 Strange, 968, is a caſe where an argument was held on a plea for new trial, but not a ſingle argument is uſed, that a new trial could not be held on capital caſes: that ſeems to be taken for granted.

It was argued againſt a new trial, in capital caſes, that the court proceeded more deliberately, and more cautiouſly, and becauſe the priſoner was allowed a challenge of his jury. The argument amounts to this: becauſe the law requires more caution, and gives the priſoner more advantages where his life is at ſtake, for that reaſon, he ſhould have leſs advantage and leſs indulgence, or in other words, becauſe the benignity of the law allowed more benefits in the awful event of life or death; therefore in another point, eſſential to the priſoner, he ſhould be bereft of an advantage, enjoyed by one indicted for an aſſault, or in a common civil cauſe. It may be argued, that the benevolence of the executive, may extend mercy to the priſoner, becauſe of any irregularity in evidence or proceeding, but this will not ſatisfy the law; it is an hazard at beſt, while the law gives him the certain advantage of a new trial. The power and right of granting a new trial in ſome caſes, is admitted; now if any of the witneſſes or jurors could be proved to have perjured themſelves, the evidence being firſt given, and the verdict pronounced; this, it will be allowed, would have weight to grant a new trial; but the caſe before the court, goes as far, if not farther; and if there ſhould appear an extreme error in ſummoning, the jury, or that one of the jurors had diſqualified himſelf from wearing the characteriſtics of an unbiaſſed man, then it muſt equally appear, that there has been an infringement of a legal right, ſufficient to lay the foundation of a ſecond hearing.

Another doctrine that was inſiſted on was, that it was diſcretionary in the court; that where they were ſatisfied with a verdict, although againſt evidence, no new trial ought to be granted: there may be inſtances of a civil nature, in which that doctrine will be allowable, but they differ materially from the one now before the court, and therefore will not apply: that application may go to the favor of the court, where they ſee the evidence ſtrong, but no favor can be exerciſed, nor is any aſked in this caſe; we only appeal to the juſtice of the caſe.

It was ſaid by one of the gentlemen, that this juror's declaring his ſentiments, was only cauſe of challenge to the favor, for which triers ought to have been appointed, and the qualification or diſqualification of the juror been determined by them, but for which it was now too late. Mr. Lewis denied the poſition. He had already proved, both on his own declaration, and by the evidence, that it did not come to their knowledge, until after the verdict was given, and therefore they came forward as ſoon as they were obliged: this was allowed a ſufficient excuſe in Salkeld 645, and 11 Modern 119, and therefore the objection was unimportant. The witneſſes could not inform John Fries, for he was in gaol; he could not know it, until yeſterday morning when the motion was made in court, for the witneſſes had no knowledge of each other, ſo as to be able to communicate it. 3 Bacon

258—9, says, that "it is particular cause of challenge, if a juror has "declared his opinion touching the matter." In causes of particular challenge, the court is to inquire into the truth of the fact, and no triers are to be called, and if they find the cause a true one, they are not to judge, nor to be left to discretion, but, *they must try the issue again*. This is the doctrine of ancient law and usage, 266 Bacon. Then all the argument about triers is out of the question, the question is, whether the juror stood indifferent, or whether he was under the influence of bias, and a prejudiced mind: the law compels the issue to steer clear of friends or enemies: no partiality whatever is to predominate; but can any man in the world, say that Rhoad's mind was free from prejudice, when he took opportunities to make such declarations?

Mr. Lewis then went into an examination of the evidence and depositions. Now suppose the court to believe the fact nearly as stated by the evidence, Mr. L. asked, whether it was possible, consistent with law or justice, to believe that a just verdict was given, or that any man ought to suffer under such a verdict? Suppose the whole twelve to have made similar declarations, it would require no argument to convince the unbiassed, that the consequence must be fatal.

It has been attempted to be proved, that even such a declaration was no ground of challenge, if it was not made from malice; but what is the meaning of an independent man? It means a man who stands on the high ground of justice and impartiality, and is not warped by prejudice, nor warmed by resentment—quite free from interest in the issue: also a man whose judgment has not been made up in favor of either the one party or the other, for if it has, though he may be an honest and well meaning man, it is not likely that his mind would be freely given *according to evidence*. Without he is free from these entanglements upon his mind, he will—he must err. Now, it appears by the evidence of even Mr. Rhoad himself, that he was warm, and might have forgotten the expressions, and nothing can be shown, but that Mayer, the witness, who has lived in thas country, is a man of good character; however, he must be supposed so, until he can be proved otherwise. Mr. Lewis remarked, that the witnesses spoke of different conversations: Mayer of one, when Rhoad came first to town; the others of two afterwards, in the room where they were sitting, and in the bed-room. He contended that no material, although a verbal difference did exist; but the testimony of Rhoads differed materially from them all; his verbal testimony and deposition was also different, as might be seen. But Mr. Lewis said, he doubted whether the testimony of Rhoad in this matter, was legal evidence or not, because it was a matter in which he was materially concerned, however they had not much objected, as there was a considerable difference in evidence going to a court, and to a jury; he had no doubt, their honors would make the necessary allowance.

Although Rhoad was not sworn at the time he used these expressions, he was summoned on this trial, and it was on high misdemeanor, whether it was indictable or not, he would not say, but it was a very imprudent disposition to encourage or even suffer. In

Salkeld, 153, Cook's caſe, chief juſtice Holt holds, that if a man ought not to be compelled to prove that he is a party, neither ſhould he be allowed to prove that he is not a party, by his own evidence: this applies to Rhoad giving evidence, in which his character is concerned. 4 ſtate trials 747—8 the caſe appears more fully: ſuch a conduct is here declared to be ſcandalous, and a miſdemeanor, and the man *ought not to be on any jury*. By four witneſſes, neither inconſiſtent with themſelves, nor with each other, Mr. Lewis ſaid this fact was clearly proved, and he thought incontrovertibly ſo: of the reſpectability of thoſe witneſſes, he knew nothing; but nothing diſreſpectful had been proved, and conſequently not their incompetency.

JUDGE PETERS ſaid that he did not know about their ſwearing falſely, nor could he ſay any thing about Mayer, but of the others he well knew that one was extremely ſtupid, and the others deeply prejudiced, on which account, their evidence ſhould be carefully ſcrutinized, and carefully received.

The neceſſity of great precaution and care, Mr. Lewis was willing to admit; but this ſtupidity was a good apology for their not revealing the fact, until it was drawn from them: their ignorance indeed, was deducible from the whole of their conduct, and the oppoſition they made to the government, but it did not ſtrike at their credibility: uninformed, and miſinformed as they were, their verity might be good. They were under indictments, and therefore perhaps afraid to ſpeak; beſides, coming from different parts of the country, they knew not John Fries: but let their offence or ſituation be what it may, they may be honeſt men, and men of truth and integrity, and therefore they muſt ſtand upon as good a footing as witneſſes could ſtand.

We muſt take it for granted then, ſaid Mr. Lewis, that the juror made theſe declarations, and if ſo, according to the law of England, and of the United States, he is diſqualified from the office, otherwiſe, that moſt invaluable right, *trial by jury*, would be eminently impaired.

MR. LEWIS then examined ſome authorities which had been quoted by the proſecuting counſel, ſome of which were irrelevant, and ſome he thought not at all applicable. With reſpect to the caſe of Ann Clifton, as quoted from the Pennſylvania practices, the juror declared that "he did not know how any body could do otherwiſe than "bring her in guilty, but he did not ſpeak as a *juryman*." The court were of opinion, it was not ſufficient to grant a new trial. The objection of the court was not becauſe it was a *capital case*, but they gave as a reaſon, that theſe words were not ſufficient to vitiate a juror: his mind as a juror, he declared was ſtill open to conviction.

It was ſtated, that the application ought not to be liſtened to, becauſe the priſoner had the challenge of *sixty eight* in effect, out of the whole pannel: how this was meant to be applied, he could not diſcover, but one fact was plain, that the ſmaller number there were ſummoned above 35, the better choice there was for the priſoner, and therefore the whole number cannot be made to exceed 60, agreeable to common law. Mr. Lewis then obſerved, that one remark of Mr. Rawle, that Mr. Rhoad was the laſt they could challenge, but they would rather have him, than truſt to the next, was a plain implication

that they were ignorant of the fact, inſtead of militating againſt the motion. In order to remove every ſuſpicion of inaccuracy from the former teſtimony, he ſaid, he had happily been able to procure one, whoſe reſpectability could not be queſtioned, and which he ſhould now introduce to the court.

GEORGE YOHE, ſworn.

COUNSEL. Were you preſent when any converſation took place between Rhoad and others reſpecting Fries and others?—relate the particulars.

WITNESS. A few days after Mr. Rhoad came down, he was at my houſe, ſitting at my ſtove, with two other gentlemen, farmers I believe: they were having converſation a good while before I came out of the bar, when I ſtood up by them: they were talking about the inſurgents and Mr. Fries, and thoſe who came from Northampton: they were mentioning that thoſe people there, who were not of the ſame opinion as thoſe now brought down, were in danger, and ſome of them ought to be hung, and Fries in particular. One of them mentioned that if Fries knew that, he would not have him on the jury; Rhoad ſaid that it was not his wiſh to come on the jury. I heard no more, but returned into my bar.

COURT. Do you recollect that Mr. Rhoad mentioned any reaſon, why they ought to be hung?

WITNESS. No, I do not recollect.

COUNSEL. You are confident that he ſaid Fries in particular?

Yes.

Cross examination. What language was it ſpoken in?

WITNESS. German.

Did Rhoad lodge at your houſe at that time?

No.

Who were preſent at the time?

I do not know who they were.

To whom did you mention this circumſtance, and how came you firſt to be brought before the court?

I mentioned that ſuch things were ſaid in my houſe, when I heard that it was brought forward; that was the firſt time.

How long had you known Rhoad before?

Six or ſeven years.

COURT. Do you recollect any perſons particularly, who were preſent at that time?

WITNESS. No, there were more people preſent, but they were at the other end of the room.

How long was it ſince?

It was ſoon after they came down; he was here ever ſince.

Friday, May 17.

MR. LEWIS reſumed his argument in favor of the evidence, which he ſaid, had not Mr. Yohe came forward, the others being ſuſpected, would have been a queſtion, whether the negative teſtimony of Mr. Rhoad, in which he was a party, or the poſitive teſtimony of four others, who were not concerned, had the moſt weight; but now,

taking it for granted, that Rhoad is miſtaken, it can be only accounted for in two ways: firſt, that his memory failed him; or ſecondly, that he was extremely prejudiced: imputing nothing corrupt to him, ſtill we cannot allow him to be leſs ſo than any one of the five witneſſes we have brought to controvert his aſſertions: allowing him not to be free from prejudice, he cannot be ſuppoſed to be capable of judging for himſelf.

Mr. Lewis then mentioned another objection founded on the act which ſays, "in caſes puniſhable with death, the trial ſhall be held "in the county," &c. To remove this, one of two things muſt take place: the court in whom is the diſcretion, muſt, from facts within their own knowledge, or facts laid properly before them, order itelſewhere; otherwiſe ſecondly, it muſt take place in the city of Philadelphia, as a matter of courſe, as the law has, without a contrary neceſſity, fixed on the county, no entry need be made: but if that neceſſity did exiſt, it ought to be entered. How the order was taken, and by what application the court was removed, he would not ſay, all he contended for, was, that it muſt appear the court did ſo adjudge it, and for good reaſons. The court could not be changed, but under certain circumſtances; theſe occurring muſt appear on the record of the court. A motion was agitated on this point, and decided againſt, but all that appears upon record, is that the motion was refuſed: whether amendment can or cannot be made after trial, he would not contend, but he had doubts. He quoted Hawk. C. 22, 129. Lord Raimond 141.

Farther. The court did not direct from what part of the ſtate the jury were to come, but left it to the marſhal, or elſe the marſhal exerciſed it without authority or power. To him the judiciary act ſect. 29 appeared too plain to be miſtaken, or to be open to conſtruction: by this it appeared that part of judicial proceedings was left—not to the marſhal, but to the judge of the court, and on him it was enjoined as a duty, which, if left to the marſhal, would give juſt cauſe of exception in the power of the priſoner. This was the practice of the marſhal; a practice entirely new, and could have no manner of weight, becauſe the contrary was the poſitive law of the land, and if ſo, nothing could contravene it; it was ſo except that power was transferred to the marſhal from the court, for if this could be left, he did not ſee why a great part of the duty of a judge could not be left for the marſhal to exerciſe as well! The marſhal could upon the ſame principle, aſſume the bench and try cauſes, becauſe the law in that part of his duty does not aſſign it more to the judge than in the other. Certain duties were aſſigned to the judge, to the clerk, and to the marſhal, to which each was reſpectively bound. The firſt ſtate trials were in 1795, and there both the judges gave the order in court, how the jury ſhould be ſummoned, directing that at leaſt 48 ſhould be ſummoned to attend for the trial of certain perſons, and at leaſt 12 from the proper counties—48 were to come from the ſtate at large. The *venire facias* muſt be ſigned by the judge and ſent to the marſhal as his direction, otherwiſe a ſeparate order of direction ſo ſigned, though not on the *venire* may anſwer the purpoſe. Reſpecting the twelve from the county, Mr. Lewis ſaid he concurred in ſentiment, that it

was not neceſſary the direction ſhould be given, becauſe the law required it as indiſpenſible, on which account he ſuppoſed it was that judge Peters juſt reminded the marſhal that capital acts had been committed in certain counties. In anſwer to this it was ſaid that the whole directions were given by the judge, but he contended that the whole muſt be in conformity, and muſt come from the court, and the marſhal could not take it up of his own accord. It was ſaid that there had been but one inſtance of this ſpecial order; true, but there had no more than one inſtance occurred to occaſion it. If Congreſs had not thought it a power neceſſary to be exerciſed by a judge, it would not have been a law, and though exerciſed but once, or although not at all it was equally ſo, for the law may ſleep, but it cannot die, nor will it be called up, but when occaſion demands.

Farther. The marſhal, without any direction from the court, or a judge thereof, has returned a greater number of jurors than he was legally authorized to do. By the act of Congreſs, a ſingle judge is empowered to hold court in certain caſes, but if that judge was to give an order out of the time of holding court, it would be conſidered as an act of the judge and not of the court, and therefore not an official nor legal order. The *venire* in the preſent inſtance is not ſigned by the judge, but by the clerk, wherein a return of ſixty is authorized, but not a word about the county, therefore the ſixty are ſummoned from the ſtate: thus the venire goes to the marſhal, whom the judge ſees, and informs him that the caſe is capital, on which account, in addition to the ſixty returned in the venire, he makes a due and regular return of twelve from one county, and ſeventeen from another, ſigned with his own name: no doubt this was in conſequence of the intimation received from the judge. He had before gone as far as his authority led him, and now he annexes twenty-nine in a ſeparate paper under the ſame order, which gave no ſuch directions, but only that not leſs than forty-eight nor more than ſixty ſhould be ſummoned. The pannel is compleated, but whether the intimation or order of the judge was given before or after, we know not: to give the intimation was right, but a wrong uſe was made of it, for thoſe from the county ought to have been included in that pannel, which he might have included, by firſt ſtriking out the ſame number, any time before it came into court, and there his power would have ended, and every thing would have been right except his having had no order from the judge; but twenty-nine more are annexed, which not being done under the venire was improper, and if it had been, it would have been equally ſo, becauſe not authoritatively given. The court have power to direct ſuch a return as they think proper, under the direction of the law, but if this is the act of a clerk, judge or marſhal, it is irregular. Part of the number of ſixty, and not beyond it, ſhould come from the county, except the expreſs order, of, and ſigned by the court, ſhould otherwiſe direct. But in this caſe even the twelve is exceeded, and ſeventeen more annexed: under that venire he might have returned the whole from the county, but he could return no part above ſixty. Here is a certificate produced by his honor Judge Peters, ſignifying that he had told the marſhal it was a capital caſe, and

twelve must be summoned from the county of Northampton: this is to be filed as an excuse for the surplus, for there cannot be an additional venire! In the trials of 1795, there were 108 jurors summoned, 72 from the state at large and 36 from three counties named, but that was by different pannells, and the same could have been done now in the like way, and with the like authority, but this surplus is not to be annexed to the single pannel. This certificate of the judge cannot amount to any thing whatever, and his honor could not have meant to give it as any thing like legal authority, all the official acts of a judge must be in writing, some way or other in order that he may be made responsible, otherwise it must depend upon his memory, and too much upon his will. But this never can be meant as a legal act.

In 1795 an act of Assembly of Pennsylvania, limited the greatest number of the jurors to be summoned from the state at large to sixty, and not less than forty-eight. The court determined that they could not be governed by act of assembly but by common law. See 2 Dallas, but still the matter was left to the judges, and not the marshal: the judges exercised discretion according to circumstances, but the act of Congress requiring twelve from the county remains binding, and is preserved as an invaluable privilege to which every man is entitled; he can be tried by men of his own neighborhood, and surely if this is such a privilege in common law, and esteemed in England as well as America, he has a much greater chance of getting his neighbors from the smaller number than from the greater; and if this number is farther exceeded by twenty-nine, the chance is still less. The marshal may be a man of virtue—such is the present marshal; but a man of a different character might succeed him, and he is to hold his place during will and pleasure. Now if it is considered as a privilege that a man should have as many of his neighbors as he can to try him, and the increase of number diminishes that privilege, and, increased to a certain extent, almost annihilates it, and if it is considered that the marshal has this authority, (which I deny) how little chance has the prisoner, and how much power has the marshal over him! For this reason the law intrusts the court with this power, and will not, nor has ever intrusted it to the marshal. (He here quoted 3 Bacon 245, and Keyling 16.) The cases referred to by Mr. Rawle; Mr. Lewis said was done by separate pannels, as in 1795—2 Hale, 263—4 Black. 344—11 Mod. 1—and 5 Bacon, 244.

When these directions are not complied with, the proceedings are null and void, for the sheriff not following the order of the court are good reason for a new trial, and therefore we conclude that the present jurors, seven of them actually serving, not being summoned by the order of the court, but by an assumed power of the marshal, both as to place and number, makes a mis-trial. 21 Viner, 172, has a case similar to the present: one person on the jury was illegally admitted, accordingly the court set aside the verdict: on the present occasion there are seven illegally admitted. There was a case when two indictments were brought in, and two pannels summoned, but it happened that the one summoned to try A, tried, B, and vice versa:—they were tried and both convicted; but on the plea, new trials were

ordered becauſe they were not the men ſummoned for the purpoſe—2 Hawk. C. 27, ſect. 108, 9, 10. See law of errors 65. The authorities referred to ſhow how it may be amended—the court are bound to render all which has been done null and void. In Aurundell's caſe, 6 Cook, the error was as to the jury proceſs for murder: the court ſet aſide the verdict, ſeeing that while there was error in the jury proceſs, his life had not even been put in danger: every thing elſe was regular—the jury was returned from the pariſh where the offence was laid; (the very pariſh, and not the city was named,) the trial went on, and no challenge was made in the array, but for the above reaſon all was ſet aſide, and a *venire facias de novo* granted.—Thus it may be ſeen challenge to the array after challenge to the poll is not too late, if good cauſe be aſſigned—2 Lord Raymond, 884.

The gentleman on the other ſide has oppoſed a ſpecious argument as to number, to wit, that the words of the venire are, you ſhall cauſe to come before the court ſuch a number, and therefore, although a much greater number were ſummoned, and no more than the legal number appear in court, there is no cauſe of complaint, but this is the common form of a venire. But in what manner is the officer to *compel* the pannel to appear before the court? By ſummoning them, otherwiſe they are fined. In a legal view as it reſpects the venire, they did all appear before the court. Hale, Blackſtone, nor any of the authorities ſay how many ſhall come, but how many ſhall be ſummoned.

Mr. LEWIS here concluded a very laborious inveſtigation of the points of law referring to the motion, and ſubmitted them to the conſideration of the court, truſting that if his client was at laſt to fall a victim, it would be to the ſword of juſtice, and not to the preſent ſtate of public opinion, ſeeing that the important proceedings on his caſe would operate as a precedent to be tranſmitted down to poſterity. He would leave the event with full ſubmiſſion, impreſſed with a firm reliance on the impartial and juſt deciſion of the court.

Mr. DALLAS obſerved that the jurors were not alone ſummoned from Northampton county, but five on the jury were from Bucks county.

Mr. RAWLE anſwered that there was a bill of indictment for treaſon committed in Bucks county, and therefore the marſhal had ſummoned them to be ready. They could as well be on the preſent jury as thoſe from Philadelphia, ſince there were twelve ſummoned from the proper county, and the law not departed from in that reſpect.

The court, obſerving that the depoſition of Mr. Rhoad, and the evidence given by Mr. Yohe contradicted each other, ſuggeſted the propriety of confronting the witneſſes in open court, in order to diſtinguiſh where the error was, accordingly

JOHN RHOAD was called.

COURT. Do you recollect being at the houſe of George Yohe, ſince you came to town to attend court?

WITNESS. Yes.

Do you recollect being engaged in any converſation relative to the inſurgents.

Yes, there was ſome converſation about it.

Did you talk about John Fries?

I cannot recollect; it was a general talk about the buſineſs, but not of Fries in particular.

What did you ſay? Recollect.

There was not much ſaid—there was one behind the ſettle talked about ſetting up liberty poles, but I did not know the man. Yohe ſaid that if they put up liberty poles it would do no harm, becauſe for liberty they could do what they pleaſed. Whereupon I ſaid that the liberty poles had occaſioned a great deal of offence and diſpute. The man then went away, when I ſaid to Yohe that that man ſeemed very merry: he anſwered that he was there every day, and that he got drunk. I do not recollect any thing more that was ſaid, I was not above five minates in the houſe.

COURT. Were you there at any other time?

WITNESS. Not in the houſe, but I was before the door.

Where did you lodge the firſt night you came to town?

At Seidell's.

Do you recollect any other perſon who was preſent at this time beſides Yohe and the drunken man?

No.

Do you recollect ſitting by the ſtove at any time, in converſation with two farmers about this inſurrection?

No.

Do you recollect being at Yohe's any other time?

I was at Yohe's no more than that once, and then did not ſit down.

MICHAEL SNYDER, ſworn.

ATTORNEY. What did Mr. Yohe ſay to you after he went out of court yeſterday; did he not tell you, that you were preſent when Rhoad made uſe of the words alluded to?

WITNESS. Yes, he ſaid, I believe you was there when he ſaid it.

Do you know any thing about it?

I do not know that I ſaw Rhoad there at all: I lodged in the houſe, but was ſometimes in, and ſometimes out of it. I told him I did not know about it.

GEORGE YOHE again called.

COURT. The court are very deſirous of your giving evidence to day, on the ſubject you did yeſterday, in the preſence of Mr. Rhoad, leſt there ſhould be a miſunderſtanding.

WITNESS. Mr. Rhoad was ſitting in my room at the ſtove, ſome days after he came down, two other gentlemen with him; they had ſome converſation before I came out of my bar, when I ſtood behind the ſtove: they were talking about the people that came from Northampton, and the inſurrection, and mentioned Mr. Fries: Mr. Rhoad ſaid that thoſe people who were not of the ſame opinion as theſe inſurgents who came down, were not ſafe; and Rhoads farther ſaid, that ſome of them ought to be hung, and Fries in particular. I returned into my bar, and then I was called into another room. I ſat there ſome time afterwards, but did not hear any thing in particular.

COURT. Had they been ſitting there ſometime before?

Yes.

What time of the day was it?

I cannot tell, but I think it was in the forenoon.

Can you tell who the other men were?

I cannot, they were ſtrangers to me, and appeared like farmers.

Did you know any more who were in the room?

There were ſix or ſeven more, I think Michael Snyder was one, but I think there were none within hearing.

Was any thing ſaid about Mr. Rhoad being on the jury?

Nothing that time that I recollect. I knew before that he was one. The man that was ſitting by his ſide, ſaid that if Fries knew that, he would not have him on the jury; he replied, that he wiſhed he would not have him.

Do you recollect any thing elſe?

No.

MR. RHOAD went to explain to Mr. Yohe ſome part of the converſation, but Mr. Yohe could not recollect it, as he ſaid he went in and out about his buſineſs. Mr. Yohe ſaid Mr. Rhoad was often in his houſe, which contradicting what Mr. Rhoad had ſworn before, that "he was never in the houſe but once, and then not five minutes, and "did not ſit down," the court aſked Mr. Rhoad to recollect whether he was never there but once. He then anſwered, that he believed he was twice, or perhaps three times, before he was called upon the jury.

COURT to MR. RHOAD. Was that after you was ſummoned down on the jury or before?

RHOAD. The laſt time I came down, and before the jury were ſworn. I came there to inquire about a man, and I believe it was one of the men who was ſitting with me at the ſtove.

To MR. YOHE. Did you ſit down with them?

No. I ſtood a little, and returned to the bar.

MR. RHOAD having ſaid he never ſat down, Mr. Yohe reminded him of ſome of the circumſtances, and ſaid that he was ſitting there more than half an hour; but Mr. Rhoad could not be brought to recollect it.

COURT to RHOAD. Do you recollect either of the two men that were in converſation with you?

RHOAD. I do not recollect ſeeing any perſon there, that I was acquainted with, but Mr. Snyder.

COURT to YOHE. Was this a ſerious converſation about the priſoner?

YOHE. I do not know, but I thought ſo. I knew he was ſummoned upon the jury, on that very account, I took particular notice.

The court deſired Mr. Yohe to repeat the words uſed by Mr. Rhoad in the ſame language, (German.) He did ſo, and Mr. Erdman the interpreter, declared them preciſely what had been before ſworn to.

MR. RHOAD declared again that he never had ſaid ſo.

The examination here cloſed, and the court adjourned for about four hours, to give the judges opportunity of examining the authorities.

In the Evening the Court again meet.

JUDGE PETERS obſerved that the opinion of lord chief juſtice Trevy, in 4 State Trials was much to the point, but that queſtion was not determined by the court. In a queſtion of ſo much national importance as the preſent, Judge Peters thought it his duty to give an opinion—A man who lives in the county where inſurrection has happened, his impreſſions of injury from the repetitions of ſuch ſcenes will be ſtronger than might be expected in other men, and therefore all that Rhoad ſaid about it being unſafe for the friends of government to live there, is accounted for, and no way improper for him to ſpeak. I think Rhoad an honeſt man, and do not think he had any malice againſt Fries more than any of the reſt, but I think he muſt have forgotten. As to what appeared to ſtrike Mr. Lewis with ſuch force, does not appear to me important. I think the proceedings might have been more regular, but yet I think they were regular enough to ſtamp the event with a ſufficient ſanction. The proceedings were much the ſame as the court of Oyer and Terminor, when the ſheriff ſummons a number more than is wanted, in order to have them ready, and when twelve are wanted, they are taken out of that number. This venire iſſued by the ſame courſe as all others do, perhaps not knowing the offences would be capital, but it appearing otherwiſe afterwards, agreeable to act of Congreſs ſome were ſummoned from the proper counties. The venire ſays the number is not to exceed 60, yet theſe words do not deſignate more than thoſe in the practice of England which directs 12, but 24 is generally returned. To be ſure the court might have given the order, but I do not ſee how this could be done without the defendant lying in gaol, or a ſpecial court being holden. There is ſome weight to be ſure in the arguments on that point, but they are not ſo important as they were held up to be. The marſhal having ready a certain number, when the iſſue was joined, then, and not before, was the number who did appear, made to appear in court. The pannel was returned, and furniſhed to Fries, on which the trial was ſuffered to proceed, and on that account I think it appears it was approved of by the court, which is a ſufficient deſignation.

JUDGE IREDELL—The queſtion which the court have now to decide is certainly as important an one as ever was before a court. With regard to any intereſt, the government could be ſuppoſed to have in the event, or the feelings of private humanity or compaſſion as men, for the very unhappy ſituation of the priſoner—theſe muſt both be ſacrificed to that impartial juſtice which our duty preremptoriiy commands us to exerciſe according to the beſt of our capacities. Sure I am that it is always my diſpoſition ſo to be influenced, as I am convinced it is alſo of the judge with whom I have the honor to ſit on the bench.

It is admitted, I believe on both ſides, that it is in the power of the court in criminal caſes to grant a new trial in favor of the priſoner, though they cannot to his perjudice, and it muſt be readily admitted that it muſt be the moſt obvious conſiderations, which could poſſible render it the duty of the court, leſt they *too readily* grant a

new trial: for if the power is placed in a court, it is proof that it muſt, or might be ſometime exerciſed, and if ever proper occaſion ariſe for the exerciſe of it, it muſt depend on ſome particular, ſtrikingly applicable circumſtances.

With regard to the particular circumſtance now brought forward, that one of the jurymen made certain declarations unfavorable to the juſtice, a priſoner has a right to expect, I muſt confeſs that until the evidence yeſterday given by Mr. Yohe, I was not ſatisfied that he had ſaid any ſuch thing as could give the court full ground to believe him improperly biaſſed, ſo as to admit juſt cauſe for a new trial; but that teſtimony corroborating the teſtimony of thoſe before given on which, independantly, we could place but little dependance, ſtrikes me with great force, otherwiſe I ſhould have entertained ſome doubt owing to their different relations of apparently the ſame event. This caution was invigorated by the very excellent character which the juror had borne. From this I have every reaſon to believe that he has not willfully done any thing wrong, nor ſworn to any thing which he does not believe to be true. From the relation, it was difficult to arrange the particular parts of the converſation ſo as to make it accord at any interval of time, on which account I was extremely deſirous that Mr. Rhoad and Mr. Yohe ſhould be confronted, and queſtions put to remind each other of the facts, ſo as both might accord; but it does appear that Mr. Rhoad's memory is extremely defective in ſome material points, and therefore, without any impeachment we may preſume it was a groſs miſtake. It is the clear opinion of the court in 4 State Trials, that if a juryman, not out of particular malice againſt the individual, but from any *other* cauſe appears to have formed a predetermined opinion, he was not fit to be a juryman, and it was therefore good cauſe of challenge. In that caſe the expreſſions uſed were much ſimilar to the preſent caſe: that opinion appears to be grounded upon the ſuppoſition that were a man, from any ill motives, *or otherwiſe*, forms an opinion ſtrongly on his mind, an improper bias is extremely difficult to get clear of, and will influence an honeſt man unwarily to give a wrong verdict, and to theſe circumſtances every man is liable. It is impoſſible for me to reſiſt the impreſſion, from the number of depoſitions produced, that Mr. Rhoad muſt, at different times, have uſed expreſſions ſimilar to thoſe related by Mr. Yohe, but I can readily conceive that ſuch expreſſions were uſed with an innocent intention, and without meaning to prejudice himſelf from afterwards ſerving as an honeſt juryman, yet I cannot be certain, but it might originate from a prediſpoſed opinion of the guilt of the man, and therefore it muſt render him leſs able to diſcriminate facts, but if no ſuch idea of guilt did exiſt, according to the authority ſtated, it would be good cauſe of challenge, if known, but if not known until after verdict is given, it would then be ſufficient time, for what is good cauſe of challenge previous to trial, is good ground for a motion after verdict. It is very much to be regretted that the witneſſes who heard theſe declarations did none of them communicate it to the counſel or the priſoner before the jury were ſworn, becauſe he might have been ſet aſide, and much unneceſſary public expence and diſtreſs to the un-

fortunate man, beſides delay of the execution of juſtice, in this particular caſe, been prevented.

It being admitted that the court may grant a new trial in criminal caſes upon ſufficient cauſe to ſhow, and it following that they ought to do it if ſhown, I farther think that if there is cauſe of challenge before, there is equal cauſe, if it is proved that the juror was biaſſed, to order it, after verdict is pronounced, whatever delay or inconvenience may reſult therefrom; that can be no reaſon to withhold a priviledge to which a priſoner is entitled: from theſe views, I think it my duty to vote for a new trial in the preſent caſe, as the fact appears too clear to be controverted. In this event, there will be ſtill an opportunity for the priſoner to be freed, and juſtice be done between himſelf and his country.

With regard to the point of law, if my mind had not been clear on the evidence reſpecting the juror, I ſhould have been decidedly againſt a new trial, and accordingly ſhould have taken the trouble more fully to have delivered my ſentiments; it being ſo, I ſhall now make but a few general remarks. As to the point, that the record ſhould evince the proceedings of the court, otherwiſe they are invalid, with reaſons why trial could not be held in the county, I think there is no neceſſity of the reaſons appearing on the record of court. If the queſtion had ſtood ſimply upon this ground, it would have been immaterial; but it did not: application was made to the court, after ſeveral indictments were found, alledging that the trials ought to be held in the county, whereupon the court declared opinion, that "great inconvenience" prevented a compliance with the motion: but farther, it appeared to be gone out of the power of the court, becauſe the indictment had been found in this court, which muſt be conſidered a part of the trial; and the law means the whole proceeding ſhall be in one place, ſo that the indictment muſt have been found in that county, otherwiſe the trial by jury could not be held there. Theſe were the reaſons which operated to influence the court to refuſe the application. In this dilemma, it was impoſſible for the court to ſay the trial ſhould not proceed here; and had it been removed, a new indictment could not have been found; if it had, the trial could not proceed upon two indictments. The only times for conſidering this queſtion, I believe, was, when this man was charged with the offence, before he was committed, or even after the court ſat, and before the indictment was brought into court. If it had been the opinion of the judge who committed him, that trial could be held there, then it could have been referred to the ſupreme court, who, if they had been of the ſame opinion, would have ordered a ſpecial court. But from the ſtate of that county, no one can believe that trial could have been held there in any way conducive to juſtice, or ſo as to make the proceedings of the court ſuch as they ought to be, becauſe the Preſident has declared, by proclamation, that the law could not be executed without military aſſiſtance, which I never wiſh to ſee guard a court of juſtice as matter of choice, though unavoidable neceſſity may ſometimes make it prudent.

With regard to the ſummoning the jury, it is to be obſerved that the practice now uſed, was an eſtabliſhed uſage of this court for

many years paſt, which is a ſanction ſufficient, if no poſitive law nullifies it. The venire, iſſued in this form, in my opinion, did iſſue with the ſanction of the court, and had the ſame effect, as though the expreſs order of the court had been annexed. It appears that it was not known, at the time the venire iſſued, that any caſes were puniſhable with death, and of courſe not neceſſary to include a ſpecial proviſion for twelve to come from the county. Mr. Lewis made a conceſſion, which, if right, did away the whole of this objection: he ſaid, that upon the marſhal's receiving information (whether it came from the judge or not) that a caſe puniſhable with death had occurred, he had a right, without any order from the court, written or verbal, to ſummon a greater number of men than in other caſes: the words of the law are, not that he ſhould ſummon twelve, but twelve at leaſt; but he obſerved that this ſhould not exceed, but be included in the number ſixty. I do not know what authority he had to limit the number to ſixty, in this or any other caſe. The law intends that a priſoner ſhall have a chance of men from his own neighborhood; certainly then the greater the number which comes from it, his chance is proportionably increaſed, therefore it can never prejudice the priſoner. I think that if the marſhal ſhould extend the diſcretion given him to an unneceſſary number, it would operate to the vexation of the perſons ſummoned, and they alone would have cauſe to complain. Formerly, by law, a ſheriff was directed to ſummon twelve, but by uſage, he actually did ſummon twenty-four, yet all above the twelve appeared to acquieſce, and it could not be of diſadvantage: ſo in the grand-jury for twenty-four, forty-eight was ſummoned: the power was aſſumed and not complained of. I preſume that if the marſhal had authority to return that number, without a venire or precept, he was not limited as to number; and that when they came here, they formed the jury attending court. I am farther of opinion, that when the pannel was preſented to the priſoner, that pannel obtained the full ſanction of the court, as much as though they had given the order.

So far as to ſubſtance. With reſpect to form, the words are, after joining the iſſue, "let the jury come." That is a direction given by the court to the marſhal to ſummon the jury, but as it would be inconvenient for him to ſummon the jury after this order, which is for him to do it without delay, thoſe jurors already ſummoned appear in court, ſo that if it was entered upon record it would appear that after the priſoner was arraigned, and iſſue joined, the marſhal had directed theſe men to come, and they had come. It appears to me that whether the marſhal ſummoned the jurors of his own accord, or whether they were ſummoned under the expreſs order of the court after iſſue was joined, in ſubſtance and in form the law is ſo far complied with as to do perfect juſtice. Though I am not certain that my opinion on theſe points of law are right, not having had much time to examine, yet I am ſtrongly of that opinion at preſent; however I have thought leſs and ſaid leſs upon them than if the main object of the motion reſted on it.

Senſible of the importance of the queſtion, and that if life is once loſt it can never be recovered; leaving aſide the queſtion which in-

volves doubt, and reſting on the facts which have appeared before the court, I deem it my duty to ſay that A NEW TRIAL OUGHT TO BE GRANTED.

JUDGE PETERS. Upon the points of law urged, I ſhould have thought proper to have given my opinion, although they would have materially differed from that of a gentleman whoſe law knowledge I much reſpect; yet I think it at this time unneceſſary to ſay any thing farther than that I agree in the opinions of the gentleman with whom I ſit.

As to the other point, to wit the conduct of this juror, I confeſs that my mind is not compleatly made up: I think that all which can be ſaid on that is, that no juryman ought to go into that box with prejudice upon his mind. In a caſe which the public at large muſt feel materially intereſted, it is impoſſible to keep the mind from being affected; all the citizens will have their feelings; the queſtion then is, whether this one individual had or had not particular malice againſt the priſoner? If not the evidence would weigh lightly on my mind: upon this point I confeſs myſelf to have doubts.

Theſe *very striking expressions* the juror ſwears he cannot recollect uſing, although the others ſwear that he did uſe them. I am ſtill doubtful, from the light opinions I entertain of all the witneſſes except one, whom I do not know, but if any impreſſions are made upon my mind favorable to the motion, his evidence has made them, otherwiſe I could not heſitate what opinion to form.

I know the event of a refuſal; I know that a diviſion of the court will be the conſequence, and the man muſt be left to the mercy of the executive. Individual puniſhment is nothing to public example; on the other hand the conſequences of a new trial would be to delay the exerciſe of juſtice. I am ſatisfied that the priſoner has had a fair and impartial trial, with all the advantages he could deſire; but as I think *public example* is the only object which the law contemplates, and as that public example will have a far more forcible effect when *every excuse* is removed, and the public fully ſatisfied with the proceedings of this court, which may not be the caſe if a diviſion of the court takes place, I rather yield my opinion to the neceſſity, than a conviction of the juſtice of a new trial. On theſe accounts I ſubmit to ſay that THERE SHALL BE A NEW TRIAL.

CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF PENNSYLVANIA,

Directed by the judge of the district to be held at Norristown, proclamation whereof was made by the marshal. Begun October 11th, 1799,

BEFORE

JUDGES BUSHROD WASHINGTON,

AND

RICHARD PETERS, Esquires,

JOHN FRIES and the other prisoners for treason and misdemeanor were brought up at this court, but a sufficiency of jurors did not appear to proceed to trial.

October 15.

MR. DALLAS contested the jurisdiction of the court upon the general position that an indictment found in the city and county of Philadelphia, could not be tried at a court holden at Norristown. The constitution and laws of the United States, he observed, were founded upon this principle: that the criminal should always be tried as near the place where the crime was committed as circumstances would admit; which was to be in the county, unless manifest inconvenience should operate to prevent it. The circuit court could appoint special courts for the trial of criminal cases, but not for civil cases. Laws of United States p. 226 vol. 2.

But the district judge ordered the court to be holden at this place, agreeable to the powers he was vested with by the quarantine and health law, passed February 25th 1799. Sect. 5th and 7th reads thus: Sect. 5th It shall be lawful for the judge of any district court of the United States, within whose district any contagious or epidemical disease shall at any time prevail, so as in his opinion, to endanger the life, or lives of any person or persons confined in the prison of such district, in pursuance of any law of the United States, to direct the marshal to cause the person or persons confined as aforesaid, to be removed to the next adjacent prison, where such disease does not prevail, there to be confined until he, she, or they, may be safely removed back to the place of their first confinement, which remove shall be at the expence of the United States.

Sect. 7. That whenever, in the opinion of the chief justice, or in case of his death, or inability, of the senior associate justice of the supreme court of the United States, a contagious sickness shall render it hazardous to hold the next stated session of the said court at the

ſeat of government, it ſhall be lawful for the chief or aſſociate juſtice, to iſſue his order to the marſhal of the diſtrict within which the ſupreme court is by law to be holden, directing him to adjourn the ſaid ſeſſion of the ſaid court to ſuch other place within the ſame, or any adjoining diſtrict as he may deem convenient; and the ſaid marſhal ſhall thereupon adjourn the ſaid court, by making publication thereof in one or more public papers printed at the place, by law appointed for holding the ſame, from the time he ſhall receive ſuch order, until the time by law preſcribed for commencing the ſaid ſeſſion. And the diſtrict judges ſhall, reſpectively, under the ſame circumſtances, have the ſame power, by the ſame means, to direct adjournments of the diſtrict and circuit courts within the ſeveral diſtricts to ſome convenient place within the ſame reſpectively.

Neither time nor place could be changed in civil caſes, but both time and place might be changed in criminal caſes.

Mr. Dallas then proceeded to apply theſe laws to the preſent motion: ſuppoſing that the place of trial ought to have been at or near where the crime was committed, yet it was determined at the March term that it ſhould not be held nearer than at Philadelphia, although Norris town was nearer than Philadelphia. It was then laid down as an eſtabliſhed principle by both the judges, that the indictment was part of the trial, and where the trial was commenced, there it muſt be concluded; and therefore a motion to remove the priſoners for trial to the county where the offences were committed, were overruled.

Firſt, he would obſerve, that the trial ought to have been held in the county: the judiciary act, vol. I. p. 67, provided that the trial ſhould be in the county where the crime was committed. Subſequent to that, an amendment to the conſtitution (8th) was paſſed, providing, "That in all criminal proſecutions, the accuſed ſhall enjoy the right to a ſpeedy and public trial, by an impartial jury of the State and *district* wherein the crime ſhall have been committed." From this Mr. Dallas conceived it clear, that what was called *district* in the conſtitution was ſynonimous *county* in the law, and recognized that expreſſion, and therefore he thought they ought to be tried in one of thoſe counties, and at no other place.

But in criminal caſes, there was a diſcretionary power in the court, or in the diſtrict judge, to remove the court in caſe of contagious ſickneſs, as well as a power to remove the priſoners.

The 5th ſection only provides for the removal for ſafe keeping of the priſoners to the next adjacent priſon, until they can with ſafety return. The court could be taken any where; but the priſoners could not be taken any where: it muſt be only to the "next adjacent priſon, where ſuch diſeaſe does not prevail." Norris town, he contended, was not the next adjacent priſon: it was to be the next priſon, to an adjacent priſon, and to one where the ſickneſs does not prevail, if it was in the power of the court to diſpenſe with one of theſe reaſons, it was with all. Norris town was 17 miles from Philadelphia, Cheſter was but 15, the difference to be ſure was but ſmall, but if the *words* of the law were not binding in every part, the ſame diſcretionary power might have removed the court 100 miles

The prisoners were therefore not to be tried, but to be kept till they could be removed back with safety.

JUDGE PETERS said, he contemplated Chester, but he had heard that there were some cases of the fever there, and he knew it had before been much afflicted with it; he therefore did not consider himself so closely bound as to be forced to go there.

Mr. DALLAS said, vague report was not to be attended to, or he believed it would be a reason against going almost to every place: a court was held at Chester on the 9th inst. He believed Chester answered the perfect description of the law. But, he said, the prisoners were removed, not merely for safe-keeping, but for trial; however, he conceived the former decision, "that the trial was begun where the indictment was found," must prevent the trials being held any where but in Philadelphia, because the indictments were found there. Though a habeus corpus was powerful in its operation, yet it was certainly not meant to be in direct opposition, and to supercede an act of congress. Nor was the personal inconvenience of the court to be considered; the act of congress was peremptory, and could not be dissented to from any cause, without it was by a repealing clause.

He hoped the court would give an opportunity to his colleague (Mr. Lewis) who was now absent, to give his ideas on the subject. He was sent for, and expected shortly.

Mr. RAWLE contended, that there was no division contemplated but that by which the United States were divided into 13 districts; he thought it impossible to conceive that "*district*" meant a county, and therefore the reference to the 8th amendment of the constitution, he thought, no support to the argument.

With respect to the power of the court to try the causes, Mr. R. thought it clear, that as both in civil and criminal cases, the courts could be removed, both with respect to time and place, under certain circumstances, so could the business of the court also; this was a matter of course, and therefore the power of habeus corpus, to bring all the prisoners up, was in the court. If it were not so, in vain would be the provision (at times of sickness) of the constitution, which directed *a speedy trial*, because inevitable delay must take place, or the lives of the court and jury, as well as of the prisoners, be in great hazard. He conceived, that the 5th section, which provided for the removal of the prisoners, was scarcely conformable to that part of the constitution which provided for a "speedy" trial, because, if the construction was, as supposed, by the other counsel, it infringed on the prisoner's right: they had no power to keep a man in long confinement, until his guilt was ascertained; and no prevalence of disorder could authorise them to it.

The gentleman said, that they were to be taken away for safe-keeping, until they could be returned in safety to the prison from whence they were taken. Now, suppose, for instance, those to be removed, who had been sentenced for eight months imprisonment, and that time expired, whilst they were at some other prison, on account of the prevailing sickness, could it be supposed that the law contemplated that they should be kept till they could with safety be returned? He presumed not.

Would they not thereby have ſuffered falſe impriſonment by being confined longer than the judgment of the court ordered? Moſt certainly they would.

As to the next convenient priſon, Mr. Rawle thought the words were not very perſpicuous, not ſufficiently, he thought, as to meaſure geometrical diſtances to a nicety. He took it to be one of thoſe caſes which would bear a reaſonable and circumſtantial conſtruction, and which was left in the judgment of the judge, whether it was convenient and ſafe to be rigorouſly executed, or not: there might be an alarm of diſorder ſufficient to warrant the judge to ſay, that it was not ſafe to lodge the priſoner in one place, and, as another was about the ſame diſtance, where no ſuch alarm exiſted, he thought himſelf juſtifiable in ordering their removal to the latter: for though there was proviſion to remove them once, there was no proviſion to remove them away again, even in caſe of alarm, except it was back to the ſame priſon they firſt were in. Upon the whole, as to removal, he thought the judge had executed his duty and his clemency. If it had not been right, the priſoners ſhould have complained at the time of their removal, but they were all perfectly ſatisfied.

With reſpect to the effect the removal would have to the juriſdiction of the Court, he thought the arguments at the laſt court reſpecting trial in the ſame county, would not apply. He referred to the argument of Judge Wilſon in the caſe of Hamilton, Dallas' Reports, 2 vol. p. 760. The Court had power in every county in the ſtate, becauſe the whole ſtate conſtituted but one diſtrict, in which the law directs them to be tried.

He did not ſuppoſe the matter of convenience was any queſtion at all: nor did he believe the Judges would be in the leaſt guided by it.

As to the buſineſs began in Philadelphia, in as much as the indictment was there brought in, it was ſtated, that the trial muſt be continued there. This might be alſo the means of delay, which the conſtitution provided againſt; but he believed the argument could be anſwered in another way. The court was held in Philadelphia, and this buſineſs was continued, and therefore wherever the court ſat, therefore its buſineſs muſt follow it. What would be the effect elſe, of an indictment being found in Norris-town, and the cauſe being continued over? Muſt the court remove back here at another ſeſſion to try the cauſe here? This would bring the court into a continual ſtate of vibration, and juſtice be much delayed. He thought the court was competent to take up what remained of former ſeſſions.

Mr. Dallas hoped the court would conſider the great inconvenience of the trials, eſpecially on the treaſon caſes, now going on: the deranged ſtate of the country, owing to the diſorder which had driven numbers of citizens from their homes, would make it ruinous to the priſoners; it would prevent the priſoners the opportunity of inquiring the characters of the jurors, and alſo of procuring witneſſes. It would doubtleſs endanger his life.

Agreeable to Mr. Rawle's argument, Mr. Dallas contended, that the 5th and 7th ſections of the Quarrantine Law were at war with each other, and not only ſo, but with the general policy of the laws and

conſtitution. But theſe two ſections, in his opinion, were diſtinct in their nature and object, and no repealing clauſe had ever been paſſed, and therefore each part muſt be carried into effect. The 8th ſection provided for the removal of the priſoners, but there was not a word about trial in it. By the 7th ſection it would appear, that the diſtrict judge might take the court to Pittſburg if he pleaſed; he was not reſtrained at all; but there was no ſuch power given to him reſpecting priſoners; he could not take them farther than the neareſt priſon of ſafety. How could theſe two ſections be reconciled? Why were not the two ſections formed upon one principle, if they were ſo connected as the gentlemen ſuppoſed? Of what avail would it be to take a court to a place where there was no power of taking the priſoners, who muſt be tried, before that court? But ſo it might be, if the reaſoning which had been given was right. Had not the 5th ſection been introduced by the legiſlature, then, indeed the whole juriſdiction would have been removed with it.

With reſpect to the indictments that might be found in Norris town, the court having been held agreeable to the 7th ſection of that law, the queſtion of preciſe diſtance being ſet aſide, undoubtedly they would go to wherever the court would remove. Inaſmuch as juſtice could not be done to the priſoners, and inaſmuch as the former deciſion prevented the trial being held any where but at the place in which it was begun, he hoped the trials would not be proceeded on.

Mr. Lewis arrived in court, and apologiſed for not being able to attend earlier: he had not ſufficiently weighed the motion, he ſaid, to be able to add any thing to the ground ably argued by his colleague, and therefore willed to leave it to the deciſion of the court.

Judge Washington ſaid, nothing was more clear than that the fifth and ſeventh ſections of the Quarrantine Law were, for different purpoſes: the 5th only relates to the removal of priſoners, that they might not fall a prey to any contagious diſeaſe that might occur whereſoever they may be confined; and this removal was not for the ſake of trial, but for ſafe keeping. It was doubtful, previous to the paſſing of this act, whether the marſhals had power to remove them, whatever might be the cauſe, or however dangerous to them to remain in priſon; but againſt this doubt and danger, Congreſs provided. The 7th ſection applies altogether to the removal of the court for the purpoſe of trial of cauſes, both criminal and civil. But all the acts that have been mentioned may be reconciled together, and all with the conſtitution. The court, without any reſtriction as to the place of its ſeſſion, if a contagious diſeaſe ſhall occur, are to be convened for the purpoſe of trying cauſes at the ſtated ſeſſion; and, it is to be remembered, that this is not a new, nor a ſpecial court, but an adjourned ſtated court, merely removed from one ſpot to another, to be holden there: of courſe, all the trials pending, and before the court at any former term, are to come on at the *place* ſo changed; for the court is the ſame: the arguments of Mr. Attorney were found, and need not be repeated.

On theſe grounds, the court thought that the trials ought to go on, and therefore the motion was over-ruled.

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